

Stronger Futures in the Northern Territory Act 2012

Independent review of the effectiveness of Northern Territory and Commonwealth laws in reducing alcohol-related harm

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Executive summary

1. Review conducted for the purposes of section 28 of *Stronger Futures in the Northern Territory Act 2012* (Cth)

1.1 Background

- (a) This is a report of the review conducted regarding the effectiveness of laws in reducing alcohol-related harm to Aboriginal people in the Northern Territory. The review is required by s 28 of the *Stronger Futures in the Northern Territory Act 2012* (Cth) (**Stronger Futures Act**).
- (b) The laws that are the subject of this review are:
 - (i) Part 2 of the Stronger Futures Act and instruments made for the purposes of Part 2 of the Stronger Futures Act; and
 - (ii) the Liquor Act (NT) and the Liquor Regulations (NT).
- (c) Subsection 28(1) also requires that the review also address:
 - (i) the *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (NT) and instruments made under that Act; and
 - (ii) the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act* (NT) and instruments made under that Act.
- (d) As the *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* and the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act* have been repealed, we have not addressed those laws in this review.
- (e) Although s 28(1) of the Stronger Futures Act also provides for the review to include any other Commonwealth or Northern Territory laws specified by the Commonwealth and Northern Territory Ministers, no other laws have been specified.
- (f) Subsection 28(2) of the Stronger Futures Act requires the review to:
 - (i) assess the effectiveness of those laws in reducing alcohol-related harm to Aboriginal people living in the Northern Territory; and
 - (ii) assess whether any provisions of those laws should be amended or repealed to increase the effectiveness of those laws in reducing alcohol-related harm to Aboriginal people living in the Northern Territory; and
 - (iii) consider any other matter specified by the Minister and the NT Minister.
- (g) There have been no other matters specified for the purposes of s 28(2)(c).

1.2 Effectiveness of the laws in reducing alcohol-related harm to Aboriginal people living in the Northern Territory

- (a) As discussed in the report, the review has been conducted as a 'desktop' review, involving consideration of existing material, and drawing largely upon the recent report of the House of Representatives Standing Committee on Indigenous Affairs concerning the Committee's inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander community and submissions to that inquiry. This approach has been adopted as a

result of the short time frames available to complete the review and because of the absence of any specific data or evidence prepared for the purposes of the review.

- (b) Although we have concluded from the materials considered that alcohol misuse has and continues to cause considerable harm to Aboriginal people in the Northern Territory, we have been unable to determine with any precision whether there has been a reduction, or otherwise, in alcohol-related harm to Aboriginal people in the Northern Territory. This has restricted our ability to assess the effectiveness of the laws, but we conclude that the scheme established by the Liquor Act and provisions of the Stronger Futures Act provide an effective framework for the regulation of supply of alcohol in the Northern Territory, and that regulation of supply is a necessary but not sufficient means (in and of itself) of addressing alcohol misuse that causes harm to Aboriginal people in the Northern Territory.

1.3 Possible amendments or repeal to increase the effectiveness of the laws

- (a) We have not identified any particular aspects of the laws that may be amended to increase their effectiveness in reducing alcohol-related harm. Nor have we been able to conclude that any of the laws, but, more particularly, the provisions of the Stronger Futures Act, should be repealed.

Will Sharpe

Special Counsel

Alice McCormick

Partner

Date: 6 August 2015

Background

2. Requirement for independent review

- (a) Subsection 28(1) of the Stronger Futures Act provides that, no later than two years after commencement, the relevant Commonwealth Minister and Northern Territory Minister must cause an independent review to be undertaken of the operation of the following laws:
 - (i) Part 2 of the Stronger Futures Act and instruments made for the purposes of Part 2 of the Stronger Futures Act;
 - (ii) the Liquor Act (NT) and the Liquor Regulations (NT);
 - (iii) the Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011 (NT) and instruments made under that Act;
 - (iv) the Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act (NT) and instruments made under that Act; and
 - (v) any other law of the Commonwealth or the Northern Territory that is specified by the Minister and the NT Minister.
- (b) Subsection 28(2) of the Stronger Futures Act requires the review to:
 - (i) assess the effectiveness of those laws in reducing alcohol-related harm to Aboriginal people living in the Northern Territory; and
 - (ii) assess whether any provisions of those laws should be amended or repealed to increase the effectiveness of those laws in reducing alcohol-related harm to Aboriginal people living in the Northern Territory; and
 - (iii) consider any other matter specified by the Minister and the NT Minister.
- (c) Subsection 28(3) of the Stronger Futures Act requires the review to be completed, and a report of the review to be prepared, before the end of three years after commencement.
- (d) We are instructed that the independent review was caused to be undertaken by a letter dated 23 June 2014 from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to the Northern Territory Government.

3. Terms of reference

- (a) The terms of reference for this independent review are as follows:

Section 28 of the Stronger Futures in the Northern Territory Act 2012 (the Stronger Futures Act) requires that the Commonwealth and Northern Territory Ministers cause an independent review of Northern Territory and Commonwealth laws relating to alcohol no later than 16 July 2014. The review will be conducted by the Department of the Prime Minister and Cabinet in collaboration with the Northern Territory Department of Business.

The review will assess the operation of the following laws as required under the Stronger Futures Act.

- *Part 2 of the Stronger Futures Act and the Stronger Futures (Alcohol Management Plans) Rule 2013*

- *The NT Liquor Act and the NT Liquor Regulations*
- *The Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011 and instruments made under that Act*
- *The Alcohol Reform (Prevention of Alcohol-related Crimes and Substance Misuse) act and instruments made under that Act*

The review will assess:

- *the effectiveness of the above laws in reducing alcohol-related harm to Aboriginal people living in the Northern Territory; and*
- *whether any provisions of these laws should be amended or repealed to increase the effectiveness of those laws in reducing alcohol-related harm to Aboriginal people living in the Northern Territory.*

The review will be completed and a report prepared and submitted to both the Commonwealth and Northern Territory Ministers for anticipated tabling in both Houses of Parliament and the Northern Territory Legislative Assembly respectively. ...

- (b) Both the NT and Commonwealth Ministers must cause a copy of the report to be tabled in their respective Parliaments within 15 sitting days of receiving it.
- (c) On 20 July 2015, Minter Ellison was engaged to undertake the independent review.

4. Approach to review

- (a) This review has been conducted as 'desktop' review, involving consideration of existing materials. As is noted in the report below, we have not had the benefit of any specific evidence or data collected for the purposes of this review. Noting the comprehensive examination recently undertaken by the House of Representatives Standing Committee on Indigenous Affairs in its inquiry into the topic of the harmful use of alcohol in Aboriginal and Torres Strait Islander communities, in developing an understanding of the circumstances of alcohol-related harm to Aboriginal people in the Northern Territory we have relied extensively on the report of the Standing Committee and various submissions made to the Standing Committee. The full list of the materials considered in conducting the review are set out below under the heading of 'Materials considered'.
- (b) In conducting the review, however, we have taken the view that section 28 of the Stronger Futures Act requires that a review be conducted of the effectiveness of the specified laws. The scope of this review, therefore, is narrower than the scope of the inquiry undertaken by the Standing Committee, both in respect of this review being limited to the effectiveness of the relevant laws, and not the broader questions considered by the Standing Committee, for instance, concerning best practice strategies to minimise alcohol misuse and alcohol-related harm, which necessarily involves consideration of measures beyond legislative measures. In contrast, this review is limited to the effectiveness of laws in reducing alcohol-related harm in the Northern Territory rather than Aboriginal and Torres Strait Islander communities throughout the Australian community.
- (c) As discussed in the executive summary, given the absence of specific evidence and data concerning alcohol-related harm, we have been unable to determine with any certainty the extent of alcohol-related harm suffered by those communities nor establish any definitive measure of the extent to which the laws under review may have been effective in reducing alcohol-related harm. The approach we have taken, therefore, is to conclude, having

regard to the materials considered, that misuse of alcohol continues to cause considerable harm to Aboriginal people in the Northern Territory, and consider whether the scheme for regulation of alcohol supply established by the Liquor Act and the Stronger Futures Act is an effective framework for addressing alcohol-related harm.

- (d) Furthermore, while s 28 of the Stronger Futures Act requires review of provisions of Part 2 of that Act and of the Northern Territory Liquor Act and Northern Territory Liquor Regulations, as the review is to be undertaken as an exercise of power under the Stronger Futures Act we consider that the intention of the legislation in requiring that the review be undertaken is directed more particularly towards developing an understanding of whether the provisions of the Stronger Futures Act and the modifications they make to the existing scheme provided for by the Liquor Act are effective in reducing alcohol-related harm. For that reason, we have undertaken a relatively broad review of the scheme for the regulation of the supply of alcohol provided for by the Liquor Act, and a more focused review of provisions of the Stronger Futures Act.
- (e) The report below commences by providing a summary of the legislation under review, including aspects of the operation of those laws. It then proceeds to a discussion, drawn from the background materials we have considered in conducting the review, of questions of alcohol-related harm suffered by Aboriginal people in the Northern Territory. The report concludes with a discussion of the effectiveness of the relevant laws in addressing that harm.
- (f) As the Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011 and the Alcohol Reform (Prevention of Alcohol-related Crimes and Substance Misuse) Act have been repealed by the Northern Territory, our review does not consider the effectiveness of those laws in reducing alcohol-related harm.

5. Materials considered

- (a) In undertaking this review, the following sources have been considered:
- (b) **Legislation, Regulations and Rules**
 - (i) *Alcohol Mandatory Treatment Act (NT)*
 - (ii) *Alcohol Reform (Prevention of Alcohol-related Crimes and Substance Misuse) Act (NT)*
 - (iii) *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act (NT)*
 - (iv) *Inquiries Act (NT)*
 - (v) *Liquor Act (NT)*
 - (vi) *Liquor Regulations (NT)*
 - (vii) *Northern Territory Emergency Response Act 2007 (Cth)*
 - (viii) *Stronger Futures in the Northern Territory Act 2012 (Cth)*
 - (ix) *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012 (Cth)*
 - (x) *Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 (Cth)*

- (c) **Bills**
 - (i) *Northern Territory National Emergency Response Bill 2007 (Cth)*
 - (ii) *Stronger Futures in the Northern Territory Bill 2011 (Cth)*
 - (iii) *Stronger Futures in the Northern Territory (Consequential and Transitional) Provisions Bill 2011 (Cth)*
- (d) **Explanatory memoranda**
 - (i) Northern Territory National Emergency Response Bill 2007, Explanatory Memorandum
 - (ii) Stronger Futures in the Northern Territory Bill 2011, Explanatory Memorandum
 - (iii) Stronger Futures in the Northern Territory (Alcohol Management Plan) Rule 2013, Explanatory Statement
- (e) **Secondary materials**
 - (i) The Hon Mal Brough MP, Media Release - National emergency response to protect Aboriginal children in the NT, 21 June 2007
 - (ii) Central Land Council, Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities, 17 April 2014
 - (iii) Commonwealth of Australia, Stronger Futures in the Northern Territory: Discussion Paper, June 2011
 - (iv) Commonwealth of Australia, Stronger Futures in the Northern Territory – Report on Consultations, October 2011
 - (v) Commonwealth of Australia, Closing the Gap, Prime Minister's Report 2015
 - (vi) Commonwealth of Australia, Department of Families, Housing, Community Services and Indigenous Affairs, Stronger Futures in the Northern Territory Bill – Alcohol Proposals Regulation Impact Statement / Post Implementation Review, November 2011
 - (vii) Commonwealth of Australia, Stronger Futures in the Northern Territory – Part 2: Six-Monthly Progress Report (1 January 2013 to 30 June 2013)
 - (viii) Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, House of Representatives Standing Committee on Indigenous Affairs, 10 June 2014
 - (ix) Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Supplementary Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, House of Representatives Standing Committee on Indigenous Affairs
 - (x) Commonwealth of Australia, Department of the Prime Minister and Cabinet, Safety and Wellbeing Programme (<http://www.dpmc.gov.au/indigenous-affairs/about/safety-and-wellbeing-programme>)
 - (xi) Commonwealth of Australia, House of Representatives Standing Committee on Indigenous Affairs, Alcohol, hurting people and harming communities – Inquiry

into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities, June 2015

- (xii) Commonwealth of Australia and Northern Territory Government, National Partnership Agreement on Stronger Futures in the Northern Territory, 2013, including Schedule D, Tackling Alcohol Abuse Implementation Plan
- (xiii) Elliot, Prof Elizabeth and Prof Jane Latimer, Submission to House of Representatives Standing Committee on Indigenous Affairs (on behalf of Lililwan Project Team), *Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, April 2014
- (xiv) Gray, Dennis and Edward Wilkes, *Reducing alcohol and other drug related harm*, Resource sheet no. 3 produced for the Closing the Gap Clearinghouse, December 2010
- (xv) Ministerial Council on Drug Strategy, National Drug Strategy 2010-2015 – A framework for action on alcohol, tobacco and other drugs
- (xvi) National Centre for Education and Training on Addiction, Liquor Licensing Legislation in Australia: Executive Summary – An examination of Liquor Licensing Legislation in Australia as at December 2010, 2011
- (xvii) Northern Territory Government, *Ampe Akelyernemane Meke Mekarle, 'Little Children are Sacred'*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007
- (xviii) Northern Territory Government, Media Release – Child Abuse Inquiry Findings Released, 15 June 2007
- (xix) Northern Territory Government, Submission to House of Representatives Standing Committee on Indigenous Affairs, *Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, April 2014
- (xx) Northern Territory Government, Department of Business, Northern Territory Wholesale Alcohol Supply 2006 to 2013
- (xxi) World Health Organisation, Global Status Report on Alcohol and Health, 2014

Summary of legislation under review

6. Northern Territory Liquor Act and Regulations

6.1 Key features

- (a) The primary object of the Liquor Act is to regulate the sale, provision, promotion and consumption of liquor so as to minimise the harm associated with the consumption of liquor and in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor: s 3(1) of the Liquor Act. The further objects of the Liquor Act are to:
 - (i) protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor: s 3(2)(a);
 - (ii) regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Northern Territory: s 3(2)(b); and
 - (iii) facilitate a diversity of licensed premises and associated services for the benefit of the community: s 3(2)(c).
- (b) The following summary will highlight three particular aspects of the Liquor Act:
 - (i) liquor licensing;
 - (ii) the restriction on possession and consumption of alcohol in particular areas; and
 - (iii) the mechanism for local liquor accords.
- (c) The *Liquor Regulations* (NT) contain relevant provisions to support the operation of these aspects of the Liquor Act.

6.2 Liquor licensing

- (a) Part III of the Liquor Act provides a framework for licensing a premise for the sale of liquor, or the sale and consumption of liquor on, at or away from it.
- (b) Under s 31(1) of the Liquor Act, the Director-General may issue a licence subject to such conditions as are considered necessary or desirable in the circumstances. Without limiting the generality of this discretion, under s 31(2) such conditions may be determined with respect to:
 - (i) the construction and furnishing of licensed premises (s 31(2)(a));
 - (ii) the equipment and facilities to be provided on or at licensed premises (s 31(2)(b));
 - (iii) the restrictions of days when and times during which licensed premises may be opened for the sale of liquor (s 31(2)(c));
 - (iv) the minimum facilities and services to be operative on the days and times during which licensed premises may be opened for the sale of liquor (s 31(2)(d));
 - (v) the method of sale of liquor, including restrictions on the type of container in which liquor may be sold and limitations as to the quantities or types of liquor which may be sold by a licensee (s 31(2)(e));
 - (vi) the standard of repair, cleanliness and hygiene to be maintained on all and at licensed premises (s 31(2)(f));

- (vii) the provision of entertainment on or at licensed premises (s 31(2)(g));
 - (viii) the provision of food on or at licensed premises (s 31(2)(h));
 - (ix) the display and content of notices, relating to the Liquor Act, on or at licensed premises (s 31(2)(i));
 - (x) the persons whom may be admitted to licensed premises (s 31(2)(j)); and
 - (xi) the prohibition of specified activities on or arts licensed premises by the licensee, employees of the licensee or patrons of those premises (s 31(2)(k)).
- (c) The Northern Territory Government has stated as follows with respect to the licensing regime in the Liquor Act (footnotes omitted):

*'Over the years, the Commission has utilised its power to vary conditions of a liquor licence to support and implement supply restrictions within communities. This has been an effective tool in reducing liquor consumption within communities by imposing restrictions on the types of liquor that can be sold by a licensee. Further, measures agreed within a community can be formalised by way of a variation to licence conditions, and appropriate sanctions can be issued where a licensee breaches those conditions. Some examples of the use of the Commission imposed conditions have included the restriction of sale of liquor on days that coincide with government payments and the restriction of types of liquor to be sold.'*¹

- (d) Subsection 33AA(1) of the Liquor Act also provides that the Minister may determine additional conditions of a licence if the Minister thinks it is urgently needed for the wellbeing of the communities that might be affected by the operation of the licence. Without limiting the generality of this discretion, s 33AA(2) provides that the Minister may determine any of the following conditions:
- (i) a condition about when the licensed premises may be open for the sale of liquor (s 33AA(2)(a));
 - (ii) a condition about the type of liquor that may be sold on the premises (s 33AA(2)(b));
 - (iii) a condition about the amount of liquor that may be sold for consumption away from the premises (s 33AA(2)(c));
 - (iv) a condition requiring proof of the purchaser's identity for a sale of liquor exceeding an amount prescribed by regulation (s 33AA(2)(d)); and
 - (v) a condition requiring the keeping of records prescribed by regulation for the sale (s 33AA(2)(e)).
- (e) Part IV of the Liquor Act contains provisions facilitating objections and complaints about certain applications under the Act. Under s 47F(1), a person, organisation or group (the identity of which are prescribed under s 47F(3)) may make an objection to the following applications:
- (i) an application for the grant of a licence under s 27 (s 47F(1)(a));
 - (ii) an application for a variation of the conditions of a licence (s 47F(1)(b));

¹ Northern Territory Government, Submission to House of Representatives Standing Committee on Indigenous Affairs, Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities, at p 8.

- (iii) an application for the substitution of other premises specified in a licence under s 46A (s 47F(1)(c));
 - (iv) an application for approval to make a material alteration to licensed premises (s 47F(1)(d)).
- (f) Under s 47F(2), an objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect:
- (i) the amenity of the neighbourhood where the premises the subject of the application are or will be located (s 47F(2)(a)); or
 - (ii) health, education, public safety or social conditions in the community (s 47F(2)(b)).
- (g) Part VI of the Liquor Act contains provisions regarding 'special licences'. A special licence authorises the holder to sell liquor in accordance with the conditions specified in the special licence: s 57 of the Liquor Act.
- (h) Part VII of the Liquor Act contains mechanisms for the enforcement of the requirements of the Act that are imposed on a licensee. Under s 68(1), a person may make a complaint against a licensee. The Director-General must then either accept the complaint or refuse to deal with it if satisfied it is frivolous or vexatious: s 68(3). If accepted, the Director-General must inform the licensee of the substance of the complaint, give them a reasonable opportunity to comment on the complaint and conduct an investigation as considered appropriate: s 68(4). On completing the investigation, the Director-General must decide to take one of the following actions:
- (i) dismiss the complaint if satisfied that no ground exists for making the complaint or if satisfied that although a ground exists for making the complaint, it does not warrant any action to be taken (s 68(5)(a));
 - (ii) otherwise, any of the following in relation to a ground for the complaint:
 - (A) give the licensee a formal warning in relation to that ground (s 68(5)(b)(ia));
 - (B) issue an infringement notice under the Liquor Regulations in relation to that ground (s 68(5)(b)(i));
 - (C) enter into an enforceable undertaking with the licensee under section 72A in relation to that ground (s 68(5)(b)(ii)); or
 - (D) give the licensee a written notice as mentioned in s 69(1) in relation to that ground (s 68(5)(b)(iii)).
- (i) Under Division 3 of Part VII of the Liquor Act, the Director-General may do the following:
- (i) on completing an investigation into a complaint about a licensee, give the licensee written notice that the Director-General proposes to take disciplinary action against the licensee (s 69(1)); and may take disciplinary action after considering any written submissions received from the licensee in response to the notice required under s 69(1) where satisfied on the balance of probabilities that a ground for taking the disciplinary action exists and, having regard to the objects of the Act, that the disciplinary action is appropriate in relation to that ground (s 69(3));

- (ii) take disciplinary action against a licensee by imposing a monetary penalty on the licensee only if satisfied the licensee has contravened a provision that creates an offence against the Act (s 70(1));
- (j) Under Division 4 of Part VII of the Liquor Act, the Director-General may accept a written undertaking given by a licensee for either or both of a contravention of the Act that has occurred or the prevention of a contravention of the Act: s 72A(1).

6.3 Restriction on possession and consumption of alcohol in particular areas

- (a) Part VIII of the Liquor Act establishes a framework for declaring a range of restricted areas.

General restricted areas

- (b) Under s 74(1)(a) of the Liquor Act, the Director-General may declare a specified area of land to be a general restricted area. Under s 74(3), the Director-General may, upon the declaration of a general restricted area, declare that the general restricted area is restricted in respect of liquor other than a specified type of liquor.
- (c) Subsection 75(1) of the Liquor Act provides that a person commits an offence if the person:
 - (i) brings liquor into a general restricted area (s 75(1)(a));
 - (ii) has liquor in their possession or under their control in a general restricted area (s 75(1)(b)); or
 - (iii) consumes, sells, supplies or otherwise disposes of liquor in a general restricted area (s 75(1)(c)).
- (d) Applications for the declaration of a restricted area may be made to the Director-General: s 76(1) of the Liquor Act. The Director-General may also propose the making of a declaration of a restricted area without an application having been made: s 76AA.
- (e) If an application for the declaration of a general restricted area is made, the Director-General must either refuse the application if of the opinion that the application is of a frivolous, irrelevant or malicious nature (s 77(a) of the Liquor Act), or accept the application for consideration (s 77(b)). If the Director-General decides to accept an application or makes a proposal for a declaration under s 76AA, then ss 78 and 79 provide for a notification and consideration process which the Director-General must undertake. After considering the application or proposal, the Director-General must then refuse to declare the relevant area to be a general restricted area, or declare an area of land to be a general restricted area, or declare an area of land to be a general restricted area in respect of liquor other than a type of liquor: s 81(1) of the Liquor Act.
- (f) Under s 87(1) of the Liquor Act, the Director-General may grant a permit to a person who resides in, or who is temporarily living in or intends to temporarily live in, a general restricted area. The permit may be issued subject to such conditions as the Director-General sees fit (s 87(3)), and the holder of a permit may, subject to any such conditions, bring liquor into, have liquor in their possession or under their control, or consume liquor within the general restricted area to which the permit relates: s 87(2).
- (g) Powers of entry, search and seizure for general restricted areas are provided for in Division 3 of Part VIII of the Liquor Act (ss 94A-99).

Public restricted areas

- (h) Under s 74(1)(b) of the Liquor Act, the Director-General may declare a specified area of land, other than private premises, to be a public restricted area.
- (i) It is an offence to consume liquor within a public restricted area: s 75(1B) of the Liquor Act. However, s 75(1B) does not apply if the liquor is consumed in accordance with a permit granted under s 89A or for the purposes of worship associated with the celebration of the Holy Communion: s 75(1C).
- (j) Applications for the declaration of a restricted area may be made to the Director-General: s 76(1) of the Liquor Act. The Director-General may also propose the making of a declaration of a restricted area without an application having been made: s 76AA.
- (k) If an application for the declaration of a public restricted area is made, the Director-General must consider it as soon as practicable: s 86B of the Liquor Act. The Director-General must conduct an inquiry about an application or proposal for a public restricted area (s 86C), and must take into account specified information in considering the application or proposal: s 86D. After considering the application or proposal, the Director-General must either declare an area of land to be a public restricted area if it is considered it is in the public interest to make the declaration and the declaration is consistent with the objects of the Act (s 86E(1)(a)); or otherwise refuse to declare the area to be a public restricted area: s 86E(1)(b).
- (l) The Director-General may grant a permit for a public restricted area to an individual or body: s 89A(1) of the Liquor Act. The permit may only be granted on an application by the individual or body and for the purposes specified in the application: s 89A(2). Such purposes may include a wedding and any other event organised by the applicant: s 89A(3). If the permit is granted, a person may consume liquor in the area in accordance with the permit: s 89A(5).
- (m) Powers of search and seizure for public restricted areas are provided for by Division 4 of Part VIII to the Liquor Act (ss 101AA-101AC).

Special restricted areas

- (n) Part VIIAA of the Liquor Act contains provisions regarding 'special restricted areas'. Under s 101AD(1), the Minister may declare a specified area of land to be a special restricted area if the Minister thinks the declaration is urgently needed for the wellbeing of the communities in and near the area.
- (o) Under s 101AE of the Liquor Act, a person commits an offence if the person:
 - (i) brings liquor into a special restricted area (s 101AE(1)(a));
 - (ii) has liquor in their possession or under their control in a special restricted area (s 101AE(1)(b)); or
 - (iii) consumes, sells, supplies or otherwise disposes of liquor in a special restricted area (s 101AE(1)(c)).
- (p) A body or an individual may apply for a permit for a special restricted area for a purpose specified in the application: s 101AI(1). Without limiting subsection (1), the purpose may be any of a single special event (eg a wedding or festival) or special events that are held periodically or regularly (eg a gathering to be held once a month): s 101AI(2). A person may do any of the things mentioned in s 101AE(1) in the special restricted area in accordance with the conditions of the permit: s 101AK(1).

- (q) Powers regarding search and seizure for special restricted areas are provided for in Division 3 of Part VIIIA of the Liquor Act.

Restricted Premises

- (r) Part VIIIA of the Liquor Act contains provisions regarding 'restricted premises'. Under s 101B, the Director-General may declare that private premises are restricted premises. Under s 101C(1), an owner or occupier of private premises may apply to the Director-General for a declaration that the premises, or a specified part of the premises, are restricted premises. An interested person may apply to the Director-General for a declaration of restricted premises for any part of private premises open to any used by the public: s 101C(2).
- (s) As soon as practicable after receiving an application for a declaration of restricted premises, the Director-General must consult with certain parties prescribed in s 101D(1) of the Liquor Act. After such consultation, the Director-General may make a declaration of restricted premises if the Director-General is satisfied that:
- (i) where the application is made under s 101C(1), making the declaration will reflect the wishes of the majority of the occupiers of the private premises (s 101E(1)(a)(i));
 - (ii) where the application is made under s 101C(2), making the declaration will be in the public interest (s 101E(1)(a)(ii)); and
 - (iii) making the declaration is practicable in the circumstances (s 101E(1)(b)).
- (t) Powers regarding offences, seizure and forfeiture for restricted premises are provided for in Division 2 of Part VIIIA of the Liquor Act.

Regulated places

- (u) Part VIIIB of the Liquor Act contains provisions regarding 'regulated places'. A place is a regulated place for the consumption of liquor if the place is within two kilometres of licensed premises and is in a public place or on private premises from which the lawful occupier is absent at the time of consumption: s 101T(1). However, a place that would otherwise be a regulated place because of s 101T(1) is not a regulated place for the consumption of liquor during a period when the consumption is permitted or authorised under a special licence issue for the place, an exemption certificate issued for the place or an exemption notice for the place: s 101T(2).
- (v) It is an offence for a person to consume liquor at a regulated place: s 101U(1) of the Liquor Act. The penalty for an offence against s 101U(1) is the forfeiture of any liquor seized under s 101Y(1)(b). It is also an offence to consume liquor at a regulated place and cause a nuisance to other people while doing so (s 101V(1)), and to consume liquor at a regulated place in a designated area (s 101W(1)).
- (w) The Director-General may, on application, issue to a person a certificate authorising the consumption of liquor at a public place within two kilometres of licensed premises: s 101ZF(1) of the Liquor Act.

6.4 Local liquor accords

- (a) Part XA of the Liquor Act contains provisions that provide for 'local liquor accords'. Local liquor accords are defined in s 120A as being:

'any written code of practice, memorandum of understanding or other arrangement that:

- (a) *affects the supply of liquor, the opening and closing of licensed premises or other aspects of the management of, or conduct of business on, licensed premises; and*
 - (b) *is made under [Part XA] for the purpose of preventing or reducing alcohol-related violence.'*
- (b) Under s 120C of the Liquor Act, a local liquor accord may provide for one or more of the following:
- (i) authorising or requiring any licensee who is a party to the accord to do either of the following from a time of the day that is earlier than the time at which, as required by the relevant licence, the selling of liquor must cease:
 - (A) to cease or restrict selling liquor (including take-away liquor) on the licensed premises (s 120C(1)(a)(i));
 - (B) to restrict the public's access to the licensed premises in the way and to the extent provided by the accord (s 120C(1)(a)(ii));
 - (ii) authorising or requiring any licensee who is a party to the accord:
 - (A) to prohibit or restrict the use of glass containers (s 120C(1)(b)(i));
 - (B) to maintain an incident register (s 120C(1)(b)(ii));
 - (C) to install and operate closed-circuit television or another security device (s 120C(1)(b)(iii));
 - (D) to provide security staff (s 120C(1)(b)(iv));
 - (E) to charge a particular price for liquor (s 120C(1)(b)(v)); or
 - (F) to do any other thing prescribed by regulation as a measure that may be taken to prevent or reduce alcohol-related violence (s 120C(1)(b)(vi)).
- (c) The Northern Territory Government has commented that '*[a]ccords allow local communities and licensees to work together on local solutions*'.²

7. Commonwealth involvement and regulation before the Stronger Futures Act

- (a) On 8 August 2006, the then-Chief Minister of the Northern Territory, the Hon Clare Martin MLA, appointed a Board of Inquiry (comprised of Rex Wild QC and Patricia Anderson) under the *Inquiries Act* (NT) to inquire into and report on the sexual abuse of Aboriginal children. The Board of Inquiry was also required to identify barriers and issues associated with the provision of effective responses to and protection against sexual abuse of Aboriginal children, and to consider how the NT Government might contribute to a more effective protection and response network and to consider how the NT Government can help support communities to prevent and tackle child sexual abuse.
- (b) On 30 April 2007, the Board of Inquiry provided the Chief Minister with its report, entitled '*Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'*'. In relation to alcohol use, the report found there to be a strong association between substance abuse, particularly alcohol, and the sexual abuse of children. The report further found that

² *Ibid*, at p 8.

alcohol and other drugs are *'having a massive negative impact on the social fabric of Aboriginal communities and contribute greatly to family and cultural breakdown, which ultimately results in an environment where children are unsafe'*.³ The first recommendation of the report was *'that Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments ...'*⁴ The Report was publicly released on 15 June 2007.⁵

- (c) On 21 June 2007, the then-Commonwealth Minister for Families, Community Services and Indigenous Affairs and the Minister Assisting the Prime Minister for Indigenous Affairs, the Hon Mal Brough MP, announced a national emergency response to introduce measures aimed at protecting Aboriginal children in the Northern Territory from sexual abuse and family violence.⁶ The Commonwealth Government's response became known as the 'Northern Territory Intervention' or 'Emergency Response'.
- (d) As part of the Northern Territory Intervention, the Commonwealth Government introduced a suite of new legislation and additional appropriations. Among this was the *Northern Territory Emergency Response Act 2007* (the **Emergency Response Act**).
- (e) Part 2 of the Emergency Response Act contained provisions dealing with alcohol regulation and management in the Northern Territory, with the object of enabling special measures to be taken to reduce alcohol-related harm in Indigenous communities in the Northern Territory. The Emergency Response Act contained provisions significantly regulating the supply of alcohol in the Northern Territory. A sunset provision in the Emergency Response Act provided that the Act (subject to some exceptions) ceased to have effect five years after the day on which the Act received the Royal Assent: s 6 of the Emergency Response Act.
- (f) In June 2011, the then-Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, released a discussion paper entitled *'Stronger Futures in the Northern Territory'*.⁷ The purpose of the discussion paper was to set out issues for discussion in priority areas for action in respect of the Australian Government's approach to continuing the work of the Northern Territory Intervention.
- (g) In October 2011, following consultation undertaken after the release of the discussion paper, the Commonwealth Government released the *'Stronger Futures in the Northern Territory – Report on Consultations'* (**Stronger Futures Consultation Report**).⁸ In relation to alcohol abuse, this report noted that a wide range of views on tackling alcohol abuse were expressed in the consultations and that in many of the consultation meetings, discussions centred on the ways in which alcohol abuse was harming communities, families and children.

³ Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007, at 161.

⁴ *Ibid*, at 22.

⁵ Northern Territory Government, Media Release – Child Abuse Inquiry Findings Released, 15 June 2007, available at http://www.inquirysaac.nt.gov.au/media_release.html (accessed 27 July 2015).

⁶ The Hon Mal Brough MP, Media Release - National emergency response to protect Aboriginal children in the NT, 21 June 2007, available at http://www.formerministers.dss.gov.au/3581/emergency_21june07/ (accessed 27 July 2015).

⁷ Available at https://www.dss.gov.au/sites/default/files/documents/09_2012/s_futures_discussion_paper.pdf (accessed 27 July 2015).

⁸ Available at https://www.dss.gov.au/sites/default/files/documents/09_2012/stronger-futures-consult_171011.rtf (accessed 27 July 2015).

- (h) Following the consultation process and the release of the Report on Consultations, the Commonwealth Government developed the Stronger Futures in the Northern Territory package.

8. Stronger Futures Act

8.1 Key features

- (a) The Stronger Futures in the Northern Territory Bill 2011 was introduced to the Commonwealth Parliament on 23 November 2011, along with the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011. Both bills were passed on 28 June 2012.
- (b) The object of the Stronger Futures Act is to 'support Aboriginal people in the Northern Territory to live strong, independent lives, where communities, families and children are safe and healthy' (s 4 of the Stronger Futures Act). The Act contains a number of measures aimed at building stronger futures for Aboriginal people in the Northern Territory. There are three main substantive parts of the Act:
 - (i) Part 2 – Tackling alcohol abuse;
 - (ii) Part 3 – Land reform; and
 - (iii) Part 4 – Food security.
- (c) The following discussion deals only with Part 2 of the Stronger Futures Act.

8.2 Tackling Alcohol Abuse

- (a) Part 2 of the Stronger Futures Act is entitled 'Tackling alcohol abuse'. The object of that Part is to enable special measures to be taken to reduce alcohol-related harm to Aboriginal people in the Northern Territory: s 7 of the Stronger Futures Act.
- (b) Part 2 of the Stronger Futures Act contains measures aimed at reducing alcohol-related harm to Aboriginal people in the Northern Territory.
- (c) Division 2 of Part 2 of the Stronger Futures Act contains provisions that modify the Liquor Act. Most significant is s 8 of the Stronger Futures Act, which inserts provisions into the Liquor Act that make it an offence for a person to bring liquor into, have liquor in their possession or control or consume liquor in an area that is an 'alcohol protected area'. 'Alcohol protected area' is defined in s 5 of the Stronger Futures Act as an area in the Northern Territory that is prescribed by rules for the purposes of s 27(1) of the Stronger Futures Act. Additionally, s 9 provides that the Liquor Act applies, while the Stronger Futures Act is in effect, as if each alcohol protected area were a general restricted area under the Liquor Act. Section 11 of the Stronger Futures Act also operates to modify the Liquor Regulations.
- (d) Division 3 of Part 2 of the Stronger Futures Act contains provisions that affect the conditions of licences issued under Part III of the Liquor Act. Subsection 12(3) provides that, while the Stronger Futures Act is in effect, a 'NT liquor licence' (defined in s 5 of the Stronger Futures Act to be a licence issued under Part III of the Liquor Act) is subject to a condition that the licensee must not sell liquor for consumption away from the licensed premises unless the purchaser holds a 'NT liquor permit' (defined in s 5 as a permit issued under s 87 of the Liquor Act) that is in force in the particular alcohol protected area. The Commonwealth Minister is also given a discretion to:

- (i) determine that the licence does not authorise the sale of liquor, or the sale and consumption of liquor on, at, or away from, those premises (s 12(4)); and
 - (ii) determine that the conditions of the licence are varied in a way specified in the notice (s 12(5)).
- (e) Under s 13(3) of the Stronger Futures Act, the Commonwealth Minister may, by written notice, determine that a NT liquor permit does not authorise the permit holder to bring liquor into, have liquor in their possession or their control within, or consume liquor within, an alcohol protected area. Further, s 13(4) provides that the Minister may determine that the conditions of the permit are varied in a way specified in the notice. Section 13A then sets out a procedure that must be adopted before the Commonwealth Minister makes a determination under s 12(4), 12(5), 13(3) or 13(4).
- (f) Division 4 of Part 2 of the Stronger Futures Act deals with notices about alcohol offences in alcohol protected areas. Subsection 14(1) provides that the NT Licensing Commission may determine that a notice that sets out that it is an offence to bring liquor into, to be in possession or control of liquor, or to consume or sell liquor, within an area that is an alcohol protected area should be posted at the place where a customary access route enters the area or the customary departure locations for aircraft flying into the area.
- (g) Division 5 of Part 2 of the Stronger Futures Act deals with assessments of licensed premises. In particular, s 15(1) and (2) provide that the Commonwealth Minister may make a request to the Northern Territory Minister to appoint an assessor to conduct an assessment in relation to a particular licensed premises if the Commonwealth Minister reasonably believes that the sale or consumption of liquor at or from the premises is causing substantial alcohol-related harm to the community.
- (h) Division 6 of Part 2 of the Stronger Futures Act deals with alcohol management plans and provides a process for the approval of alcohol management plans by the Commonwealth Minister. Under section 16 of the Stronger Futures Act an application may be made for approval of an alcohol management plan. If an application for approval is made, the Minister must determine whether the plan should be approved (section 17). An approved plan may be varied or revoked by application to the Minister (sections 21 -25). There are also provisions for procedural matters concerning the approval, variation and revocation of a plan (sections 18 and 25). Under subsection 17(3) rules may be made concerning minimum requirements that must be met by an alcohol management plan for the purpose of it receiving approval. Those minimum requirements are currently provided for by the *Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 (Alcohol Management Plan Rules)*.
- (i) The Alcohol Management Plan Rules set out minimum standards concerning:
- (i) consultation and engagement (item 1 of Schedule 1);
 - (ii) management of the alcohol management plan (item 2 of Schedule 1);
 - (iii) alcohol management plan strategies (item 3 of Schedule 1);
 - (iv) monitoring, reporting and evaluation (item 4 of Schedule 1);
 - (v) identification of geographical boundaries of an alcohol management plan (item 5 of Schedule 1).
- (j) Division 7 of Part 2 of the Stronger Futures Act deals with the process for making rules prescribing that an area is an alcohol protected area. Under s 27(1), an area in the Northern Territory may be prescribed by the rules as an alcohol protected area, while s 27(2)

provides that the rules may revoke or vary a rule made for the purposes of s 27(1). Subsection 27(6) provides that the Minister must undertake certain consultation before making a rule for the purpose of s 27(1) or (2), and s 27(9) provides the matters that the Minister must have regard to in making a rule for the purposes of s 27(1) or (2).

- (k) We note that the effect of items 5 and 6 of Schedule 1 to the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* (Cth) is to cause areas that were prescribed areas under the Emergency Response Act to become alcohol protected areas for the purposes of the Stronger Futures Act. Under s 9 of the Stronger Futures Act, those alcohol protected areas are treated as general restricted areas, as defined in the Liquor Act. No further areas have been prescribed as alcohol protected areas under s 27 of the Stronger Futures Act, and no rules have been made under s 27 to cause an existing alcohol protected area to cease to be an alcohol protected area.
- (l) Division 8 of Part 2 of the Stronger Futures Act contains the requirement for this particular independent review to be undertaken.
- (m) Division 9 of Part 2 of the Stronger Futures Act deals with miscellaneous matters relating to this Part 2 (such as the NT Licensing Commission providing information requested by the Minister and merits review of certain determinations made under this Part).

9. Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act (NT) and instruments made under that Act

- (a) On 3 March 2011, Delia Lawrie, Minister for Justice and Attorney-General of the Northern Territory, introduced the Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Bill 2011 to the Northern Territory Legislative Assembly. On 5 May 2011, that Bill passed and became the *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act (SMART Court Act)*.
- (b) The SMART Court Act established the Substance Misuse Assessment and Referral for Treatment Court (**SMART Court**), which was given the power to make particular orders for eligible offenders who seriously misuse alcohol or drugs.
- (c) On 27 June 2013, the Northern Territory Legislative Assembly passed the Alcohol Mandatory Treatment Bill 2013. When it commenced on 1 July 2013 as the *Alcohol Mandatory Treatment Act*, it repealed the SMART Court Act.
- (d) In light of the repeal, it is not necessary to assess the effectiveness of the SMART Court Act for the purpose of this review.

10. Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act (NT) and instruments made under that Act

- (a) On 3 March 2011, Delia Lawrie, Minister for Justice and Attorney-General of the Northern Territory, introduced the Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Bill 2011 to the Northern Territory Legislative Assembly. On 5 May 2011, that Bill passed and became the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act (Prevention of Alcohol-related Crime and Substance Misuse Act)*.
- (b) The Prevention of Alcohol-related Crime and Substance Misuse Act contained provisions regarding:

- (i) measures for preventing the commission of alcohol-related offences, such as prohibitions on access to, and consumption of, alcohol by people who are misusing alcohol and increased availability of intervention aiming to reduce misuse;
 - (ii) compulsory assessment of people reasonably believed to be misusing alcohol or drugs;
 - (iii) compulsory treatment for the recovery and rehabilitation of people with dependency on alcohol or drugs;
 - (iv) appropriate intervention for people who are misusing alcohol or drugs; and
 - (v) referral for assessment for income management of people who are misusing alcohol or drugs.
- (c) On 27 June 2013, the Northern Territory Legislative Assembly passed the Alcohol Mandatory Treatment Bill 2013. When it commenced on 1 July 2013 as the *Alcohol Mandatory Treatment Act*, it repealed the Prevention of Alcohol-related Crime and Substance Misuse Act.
- (d) In light of the repeal, it is not necessary to assess the effectiveness of the Prevention of Alcohol-related Crime and Substance Misuse Act for the purpose of this review.

Review

11. Alcohol-related harm

- (a) This review is required to assess the effectiveness of the laws described above in reducing alcohol-related harm to Aboriginal people in the Northern Territory. To undertake that review it is necessary to understand, first, what alcohol-related harm is, and, second, the extent of such harm caused to Aboriginal people in the Northern Territory. In this section of the report we address the question, what is alcohol-related harm; in the section that follows we address the question of the extent of alcohol-related harm caused to Aboriginal people in the Northern Territory by the misuse of alcohol.
- (b) It is widely acknowledged that harm caused by alcohol consumption can take many different forms. The Explanatory Memorandum to the Stronger Futures in the Northern Territory Bill 2011 noted that the feedback received through the Stronger Futures consultations indicated concern amongst Aboriginal communities in relation to harm in the form of accidents, deaths and health problems. It was concerns expressed by members of Aboriginal communities in the course of the Stronger Futures consultations regarding the harm suffered from alcohol that led to the desire for the continuation of the 'dry' status of the communities and the continuation of alcohol measures in the Stronger Futures Act.⁹
- (c) The recent report of the House of Representatives Standing Committee on Indigenous Affairs of its inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities (*Alcohol, hurting people and harming communities*) (**Standing Committee Report**) referred to the harmful effect that alcohol can have on health outcomes. The Standing Committee Report states:
- 2.18 *Alcohol is the fifth leading cause of disease among Aboriginal and Torres Strait Islander people. The burden of disease attributable to alcohol among Aboriginal and Torres Strait Islander people is twice the level of non-Indigenous people.*
- 2.19 *The PAAC notes that for Aboriginal and Torres Strait Islander men in particular, alcohol is strongly associated with four of the top ten causes of premature mortality: suicide (9.1 per cent of potential years of life lost), road traffic accidents (6.2 per cent), alcohol dependence and harmful use (3.9 per cent), and homicide and violence (2.8 per cent).*
- 2.20 *Alcohol consumption impacts on rates of hospitalisation. For health conditions related to alcohol, Aboriginal and Torres Strait Islander men are hospitalised at rates between 1.2 and 6.2 times higher than non-Indigenous men, and Aboriginal and Torres Strait Islander women at rates between 1.3 and 33 times higher. Deaths from alcohol-related causes are overall 7.5 times greater for Aboriginal and Torres Strait Islander people than those of non-Indigenous people.*
- 2.21 *Alcohol can also prevent appropriate treatment for other conditions. The Aboriginal Drug and Alcohol Council (SA) Inc. explain that there are many medical conditions that are unable to be properly identified or treated due to alcohol addiction. [references deleted]*

⁹ See Explanatory Memorandum to the Stronger Futures in the Northern Territory Bill 2011, p 1.

- (d) Alcohol also causes harm to mental health. The Standing Committee Report states in relation to harm to mental health of Aboriginal and Torres Strait Islander people that:
- 2.26 *Milliya Rumurra Aboriginal Corporation notes that over the last few years they have seen an increase in complex client presentations involving multiple drug use and related mental health issues.*
- 2.27 *The Queensland Government notes that there is an over-representation of Aboriginal and Torres Strait Islander communities in data describing alcohol-related mental health admissions to hospital:*
- In 2012–13, across discrete Indigenous communities, the annual rate of hospital admissions where alcohol-related mental and behavioural conditions were diagnosed, ranged from 12.0 per 1,000 persons (15 years and older) up to 162.2 per 1,000 persons (15 years and older). This compares with a state-wide rate of 10.0 per 1,000 persons (15 years and older). [references deleted]*
- (e) As the Standing Committee Report also notes, alcohol is a risk factor in relation to suicide:
- 2.29 ... *The National Alcohol Indicators Bulletin no. 11 noted that suicide accounted for 19 per cent of alcohol-attributable deaths amongst Aboriginal and Torres Strait Islander men from 1998 to 2004.*
- 2.30 *The Kimberley Aboriginal Law and Culture Centre (KALACC) notes that in the year from January 2006 to January 2007, there were some 13 suicides in the small community of Fitzroy Crossing in the Kimberley, Western Australia. The population of Fitzroy Crossing was approximately 1500 at that time.*
- 2.31 *KALACC note that the Coroner made comment that of the 21 deaths by suicide in 2006, only two did not have any evidence of alcohol or cannabis. The Coroner further notes that in 16 of the 21 cases the blood alcohol level of the deceased was in excess 0.15 per cent, three times the maximum permissible level for driving a motor vehicle.*
- 2.32 *The Western Australian Coroner, in February 2008, highlighted the extremely high statistical correlation between alcohol and suicide. [references deleted]*
- (f) Awareness also of inter-generational alcohol-related harm in the form of Fetal Alcohol Spectrum Disorder (**FASD**) and fetal alcohol syndrome (**FAS**) is increasing – but its prevalence appears to be increased by a lack of information and awareness.¹⁰
- (g) The implications of FAS and FASD was a topic that the Standing Committee was specifically asked to address through the terms of reference for its inquiry. Regarding the symptoms of FAS and FASD, the Standing Committee Report notes the following:
- 6.10 ... *The children diagnosed with FAS and FASD have varying degrees of brain damage. The disabilities associated with FAS and FASD include behavioural disorders such as poor impulse control, developmental delay, impaired language and communication, and social and emotional development delays. The consistent feature of FAS and FASD is lifelong learning and behavioural impairment.*
- 6.11 *Ninety per cent of adults with FAS demonstrate mental health problems, 60 per cent have trouble with the law and disrupted education, 40 per cent*

¹⁰ See Standing Committee Report, paragraph 6.7, p.98; *Northern Territory Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, April 2014, p 18.

having substance abuse issues, and fewer than 10 per cent live or work independently by 21 years of age.

6.12 *The life of someone with FASD may also see them experiencing early life trauma and disadvantage in the early years, low socioeconomic status and welfare dependency, and exposure to household stressors including food insecurity, single parenthood, domestic violence, and mental health issues in a parent or carer. [references deleted]*

- (h) In the context of Northern Territory communities, the Northern Territory Government in its submission to the Standing Committee noted data published by the Northern Territory Midwives' Collection that at the first antenatal visit, 13% of Indigenous mothers reported drinking alcohol during pregnancy, compared to 9% of non-Indigenous mothers.¹¹
- (i) Data from the Lililwan Project conducted in the remote Aboriginal community of Fitzroy Crossing Valley in Western Australia suggests that more than half of the women living in Fitzroy Valley drank alcohol during their pregnancies in 2001 and 2002, and that most of the women who drank alcohol did so at high risk levels.¹² In Australia the reported prevalence of FASD is 0.68 per 1000 births, but there is a higher prevalence in communities with high-risk drinking patterns. In Fitzroy Valley the Lililwan Project found that amongst children born between 2002 and 2003 the rate of FAS was 120 per 1000 births – amongst the highest in the world. Data from the Lililwan Project led the Standing Committee Report to conclude that, '*[i]t is likely that national statistics on maternal alcohol consumption mask more serious problems in certain communities ...*'.¹³
- (j) Physical harm from alcohol is serious in itself, but the harm caused by alcohol consumption is not limited to physical harm. The Standing Committee Report notes, for instance, the submission of the National Indigenous Drug and Alcohol Committee (NIDAC) that alcohol and other drugs can impact on the 'fabric' of society.¹⁴
- (k) The intentions of both the Commonwealth and the Northern Territory Governments to address alcohol-related harm in all of its manifestations, and not just as it is manifested in the form of physical harm, is demonstrated by the terms of the *Tackling Alcohol Abuse Implementation Plan (Alcohol Implementation Plan)* of the *National Partnership Agreement on Stronger Futures in the Northern Territory (National Partnership Agreement)*.¹⁵ The Alcohol Implementation Plan states, for instance, that:
 - 2. *Alcohol abuse in the NT is a major contributing factor to Indigenous disadvantage, including reduced life expectancy, poor health, education and employment outcomes, and has a devastating impact on community safety.*

...

¹¹ Northern Territory Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities, April 2014, p 19.

¹² Submission to the House of Representatives Standing Committee on Indigenous Affairs, Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities, prepared by Professor Elizabeth Elliot and Professor Jane Latimer on behalf of the Lililwan Project Team, April 2014, p 3.

¹³ Standing Committee Report, paragraph 6.21, p 100.

¹⁴ Standing Committee Report, paragraph 2.22, p 31.

¹⁵ The Stronger Futures in the Northern Territory National Partnership Agreement will be replaced by a new National Partnership Agreement on Northern Territory Remote Aboriginal Investment. The new agreement is currently being renegotiated by the Commonwealth and Northern Territory Governments. Alcohol measures under the new agreement are currently being negotiated as part of this process.

4. *Through this Implementation Plan communities will be encouraged and supported to develop local alcohol management plans that meet the regulated minimum standards under the Stronger Futures in the Northern Territory Act 2012. Through the negotiation of these plans, communities will identify local solutions that:*
- (a) *provide for the effective reduction in alcohol use amongst community members;*
 - (b) *address the harm caused by excessive alcohol misuse to individuals, families and the community; and*
 - (c) *improve the safety of community members from alcohol abuse, especially vulnerable women, children and families.*
- (l) The continued 'whole of community' approach to alcohol-related harm is carried through in the Commonwealth Government's current policy settings, which place improved drug, alcohol and substance misuse prevention and treatment within the Indigenous Affairs safety and wellbeing agenda.¹⁶
- (m) The World Health Organisation says in its 2014 *Global Status Report on Alcohol and Health (WHO Report)* that:¹⁷
- Alcohol consumption can have both health and social consequences for the drinker. The harmful use of alcohol can also result in harm to other individuals, such as family members, friends, co-workers and strangers.*
- (n) The impact of alcohol misuse on crime and anti-social behaviour is noted in the Northern Territory Government's submission to the Standing Committee, which stated that:
- It is ... recognised that alcohol impacts crime and anti-social behaviour, with more than 60% of police work relating to alcohol. From 2008 to 2013, approximately 60% of all assault offences in the NT were alcohol related and 65% to 68% of family violence assaults were alcohol related. Alcohol was a factor in 42% of road deaths between 2008-09 to 2012-13, where the driver had an illegal blood alcohol concentration.*¹⁸
- (o) In terms of societal harm to the drinker, the WHO Report says:¹⁹
- Intoxication, dependence or alcohol withdrawal states can result in poor performance in major social roles – in functioning at work, in parenting, in relationship and friendship roles. Both the drinker and others may be affected by the consequences, such as job or productivity loss, break-up and dysfunction in family life, including domestic violence. This in turn can result in harm to physical or mental health, caused by the role functioning impairment itself, others' reactions to the impairment, or both (Schmidt et al., 2010).*
- (p) In terms of harm to other persons, the WHO Report states:²⁰

¹⁶ See <https://www.dpmc.gov.au/indigenous-affairs/about/safety-and-wellbeing-programme>, accessed 28 July 2015

¹⁷ World Health Organisation, *Global Status Report on Alcohol and Health*, 2014, WHO Press, Geneva, p 11.

¹⁸ Northern Territory Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities, April 2014, p 3.

¹⁹ WHO Report, p 14.

²⁰ Ibid, p 15.

The harms to others may be concrete and externally verifiable, as with injuries or damages, or may be more subject to social definition, as with some social role defaults, or to another's perception, as with many losses of amenity (Laslett et al., 2011). The harms may be relatively mild, such as being wakened by drunken carousers outside, or may be very severe, including death or a lifelong disability. A survey specific to harms to others in New Zealand found the prevalence of such harms to be higher than the prevalence of harms from one's own drinking (18% versus 12%), particularly among women and young people (Connor & Casswell, 2012). The same research group found that the greater the exposure to heavy drinkers, the lower people's scores on measures of personal well-being and health status (Casswell et al., 2011).

- (q) In a similar vein, the *National Drug Strategy 2010-2015 (National Drug Strategy)*, developed by the Ministerial Council on Drug Strategy, states that:

Alcohol, tobacco and other drug use can contribute to and reinforce social disadvantage experienced by individuals, families and communities. Children living in households where parents misuse drugs are more likely to be the victims of child maltreatment. Children with parents who drink heavily, smoke or take drugs are more likely to do so themselves—leading to intergenerational patterns of misuse and harms. Family breakdown and job loss is also associated with problematic drug use.

- (r) It was the harm to children from alcohol misuse that informed the alcohol measures in the Emergency Response Act. The Explanatory Memorandum to the Northern Territory National Emergency Response Bill noted findings by the Northern Territory Board of Inquiry in the Protection of Aboriginal Children from Sexual Abuse (the 'Little Children are Sacred' report) that *'negative impacts of alcohol abuse result in environments where children are not safe'*. The Inquiry also concluded that *'the lives of Aboriginal children are more important than the right to drink'*. The Explanatory Memorandum explained that the measures in the Bill:

are a response to the findings of the Inquiry and, along with the other measures in this bill, will help to create environments in which Aboriginal children in the Northern Territory will be safe and healthy.

- (s) The 2011 *Stronger Futures in the Northern Territory: Report on Consultations (Stronger Futures Consultations Report)* noted that problems raised by respondents concerning alcohol in their communities included:²¹

Alcohol is a serious issue. Children don't have people taking care of them as mums and dads are drinking. It's sickness; it's a problem that you (government) need to address.

Drinking in the community causes problems with adults and kids — there is too much noise and the kids can't get to sleep, then they are too tired to go to school the next day.

Young people are not going to school — they are drinking and smoking gunja.

...

²¹ *Stronger Futures in the Northern Territory: Report on Consultations*, October 2011, pp 35-36.

We have had enough, my partner works, I have small children and because alcohol is so bad we are actually leaving town to escape what is happening. Sad really but we are so glad to be leaving.

- (t) These are continuing problems that are also reported by the Standing Committee Report. At paragraph 2.4 the Standing Committee Report notes that *'harm resulting from the misuse of alcohol is diverse and far reaching'*. At paragraph 2.14 the Standing Committee Report notes the contention by the Central Land Council that:²²

domestic violence, alcohol related deaths, child neglect, property damage and other criminal activity, a breakdown in cultural obligations, and negative impacts on education and employment outcomes are all outcomes of alcohol abuse.

- (u) However, the Standing Committee Report also notes that the full extent of the harmful effects of alcohol misuse is largely unknown *"because alcohol abuse is not always immediately identified as the underlying or main cause of these problems"*.²³
- (v) It is clear to us that the harm suffered from alcohol misuse by Aboriginal people living in the Northern Territory includes physical harm, in the form of adverse health outcomes, injury and death, but also harm to social structures and relations. However, an absence of data and other evidence concerning alcohol related harm is a common difficulty in seeking to accurately identify the scope of the problem presented by alcohol misuse. As discussed in the following section of this report, limited evidence and data and the diverse forms of alcohol-related harm, and difficulties in establishing alcohol to be the cause of those harms, limit our ability to determine with any precision the extent of alcohol-related harm to Aboriginal people in the Northern Territory.

12. Alcohol-related harm to Aboriginal people living in the Northern Territory

- (a) In conducting this review we have been unable to identify sufficient data and evidence that would allow a proper baseline to be established regarding the extent of harm caused by alcohol misuse to Aboriginal people in the Northern Territory at the commencement of the Stronger Futures Act, nor sufficient data and evidence to properly establish the extent of alcohol-related harm at the conclusion of the three year period since commencement of the Act.
- (b) In its submission to the Standing Committee the Northern Territory Government referred to various sources by which it collects and reports on alcohol-related harm:²⁴

The NT Government has an Alcohol Data Unit that collects and reports on alcohol related harms across the government departments, including wholesale liquor supply, health and crime/police data. In the past this unit has reported on a range of alcohol indicators including PCAC [per capita alcohol consumption], alcohol related assaults, domestic violence assaults, aggravated assaults, alcohol related anti-social behaviour incidents, numbers taken into protective custody and sobering up shelters, alcohol related offences such as Driving Under the Influence (DUI), family violence and restricted area infringements. Aboriginality and gender can be collected for some of these indicators. Alcohol related hospital data

²² Also see Central Land Council submission to the Standing Committee, p 1.

²³ Standing Committee Report, paragraph 2.14.

²⁴ Northern Territory Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities, April 2014, p 14.

is also collected which captures alcohol related hospitalisation and emergency department admissions, and can be broken down into Indigenous, non-Indigenous and gender.

- (c) The Northern Territory Government also noted difficulties in collecting and reporting on alcohol-related harm:

One of the challenges in collecting and reporting alcohol data in the NT is that administrative data is not reliable or available in most remote communities, especially small remote communities without a police station.

- (d) This challenge, and the absence of reliable data that arises from it, is of particular significance in the context of this review, given the focus of the laws upon implementing a special regime for alcohol regulation in remote Aboriginal communities.
- (e) We note that although the availability of whole of population data is beneficial in developing a broad understanding of trends in alcohol consumption and alcohol-related harm, including within the Aboriginal and Torres Strait Islander population, it is of only limited benefit in developing an understanding of the effectiveness of the laws under review in reducing alcohol-related harm.
- (f) In its submission to the Standing Committee the Northern Territory Government said of the availability of relevant data that:²⁵

A fundamental flaw in national surveys used to measure drinking patterns is the under representation of Aboriginal people. This issue has a significant impact for the NT, where Aboriginal people make up approximately 27% of the population (ABS 2012) and more than half live in very remote areas. Research and data to date show that the drinking patterns of Indigenous people are very different to the non-Indigenous population in the NT. Far less Indigenous people drink alcohol than non-Indigenous people. Those who drink tend to drink at very high risky levels and often binge drink. Drinking patterns are impacted by access to the supply of alcohol, such as living in a dry area, proximity to liquor outlet/s, permits, supply times as well as available money to purchase alcohol. Indigenous people often drink in a group or share alcohol.

There is a need for a comprehensive longitudinal study of drinking patterns of Aboriginal people that takes into account the different groups such as the homeless, itinerants, urban living in private households, town camps and remote residents. It is only then that we will get a real understanding of the drinking patters of Indigenous people in the NT.

- (g) In undertaking this review we have not had the benefit of any specific research into alcohol use and alcohol-related harm in the communities within the alcohol protected areas under the Stronger Futures Act and the general restricted areas under the Liquor Act. There have been no further consultations such as those conducted for the Stronger Futures Consultations in 2011, which may have provided anecdotal evidence of the success, or otherwise, of the laws.
- (h) In the absence of data and evidence to establish a baseline of the extent of alcohol-related harm, or data and evidence to determine the current extent of alcohol-related harm to Aboriginal people in the Northern Territory, we are unable to establish with any certainty

²⁵ Northern Territory Government Submission to the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities, April 2014, pp 13-14.

that there has been a reduction in alcohol-related harm. Nevertheless, for the purposes of this review, and having regard to the sources relied upon and the summary set out above, we have concluded that:

- (i) the misuse of alcohol within Aboriginal communities in the Northern Territory has been a source of considerable harm to the members of those communities; and
 - (ii) the misuse of alcohol continues to be a source of considerable harm to Aboriginal people in the Northern Territory.
- (i) Relevantly, we note that the National Drug Strategy describes disadvantaged communities, such as Aboriginal communities, as being at a greater risk of harm from alcohol than the broader Australian community:²⁶

Disadvantaged populations are at greater risk of harms from alcohol, tobacco and other drug misuse. For example, Aboriginal and Torres Strait Islander peoples experience a disproportionate amount of harms from alcohol, tobacco and other drug use. Drug-related problems play a significant role in disparities in health and life expectancy between Indigenous and non-Indigenous Australians. Indigenous Australians are more likely to die of smoking-related illnesses, such as diseases of the respiratory system and cancers, than other Australians.

- (j) In reaching the conclusions above we nevertheless also note the following:
- (i) the misuse of alcohol is not a problem that is limited to communities in the Northern Territory, nor to Aboriginal and Torres Strait Islander communities;
 - (ii) Aboriginal and Torres Strait Islander people are more likely to abstain from the use of alcohol than non-Indigenous people – one third of Aboriginal and Torres Strait Islander abstaining from the use of alcohol compared to one eighth of non-Indigenous people;
 - (iii) people living in very remote communities may be less likely to consume alcohol at harmful levels compared to those in regional and remote areas;²⁷
 - (iv) reporting on Wholesale Alcohol Supply in the Northern Territory for the period 2006 to 2013 indicates a trend towards a long-term decline in alcohol consumption in the Northern Territory;²⁸
 - (v) the regional composition of the supply of alcohol in the Northern Territory changed over the period of 2006 to 2013, such that the percentage of the total supply that is consumed in the Darwin and Palmerston regions increased and the percentage consumed in the Alice Springs and Nhulunbuy regions decreased;²⁹
 - (vi) reductions in wholesale alcohol sales were recorded after the introduction of a Liquor Supply Plan in Alice Springs in 2006 that prohibited sales of table wine in containers larger than two litres and fortified wine in containers larger than one litre;³⁰

²⁶ National Drug Strategy, p 2.

²⁷ See Standing Committee Report, paragraph 7.42, p 131.

²⁸ *Northern Territory Wholesale Alcohol Supply 2006 to 2013 (Wholesale Alcohol Report)*, Northern Territory Department of Business, pp 2-3.

²⁹ Wholesale Alcohol Report, p 7.

³⁰ Standing Committee Report, paragraphs 7.22-7.23, p 126.

- (vii) anecdotally, restrictions on the supply of alcohol in Northern Territory remote Aboriginal communities have had some success in improving the circumstances of those communities – for instance, the 2011 Consultation Report indicated some success of the alcohol measures of the Emergency Response Act.³¹

There were comments indicating that alcohol restrictions have resulted in some communities becoming quieter and with fewer incidents of violence;

- (viii) alcohol restrictions imposed in the Fitzroy Valley community in Western Australia, and the 2010 report produced by the Western Australian Government regarding the restrictions, indicate positive outcomes are able to be achieved through specific restrictions on the supply of alcohol within a community.³²
- (k) Having considered the question of alcohol-related harm as evidenced by the materials considered for this review, and reached the limited conclusion that alcohol misuse continues to cause considerable harm to Aboriginal people in the Northern Territory, we now proceed to consider whether the laws under review provide an effective means of addressing that harm.

13. Effectiveness of the laws under review

13.1 Regulating the supply of alcohol

- (a) The materials available to us show that just as alcohol-related harm is multidimensional, so are the determinants of alcohol misuse. Furthermore, in many cases alcohol misuse may itself derive, directly or indirectly, from alcohol-related harm. For instance, lack of education and employment are reported as determinants of alcohol misuse, but education and employment opportunities may themselves be adversely impacted by alcohol misuse.
- (b) As discussed in the Standing Committee Report, the Australian Institute of Health and Welfare identifies the following determinants of alcohol misuse:
 - (i) educational attainment;
 - (ii) connection to family, community, country and culture;
 - (iii) employment;
 - (iv) housing;
 - (v) racism, and/or discrimination; and
 - (vi) interaction with government systems, including:
 - (A) access and treatment within the health system; and
 - (B) contact with the criminal justice system.
- (c) The Standing Committee Report also refers to the Queensland Government's submission to the effect that '*alcohol use is determined by a complex range of inter-related issues*', those issues including:³³
 - (i) poor educational attainment;
 - (ii) parenting skills and effective supervision of teenagers;

³¹ 2011 Consultation Report, p 35.

³² Department of the Prime Minister and Cabinet submission to the Standing Committee, p 9.

³³ Standing Committee Report, paragraph 1.9, p 3.

- (iii) low employment and economic participation rates; and
 - (iv) lack of access to culturally capable health and rehabilitation services.
- (d) As demonstrated in the comprehensive legislative summary set out above, the laws that are the subject of this review are directed towards establishing a framework for the regulation of supply of alcohol in the Northern Territory, and, for the purposes of the Stronger Futures Act, a particular regime for the regulation of supply in prescribed communities.
- (e) We have concluded that the regulation of the supply of alcohol by way of laws such as those under review is a necessary but not sufficient means of itself of addressing the determinants of alcohol misuse, and thereby addressing alcohol-related harm. In reaching this conclusion we rely particularly upon the National Drug Strategy, but also upon our review of the materials as discussed above.
- (f) The National Drug Strategy has three pillars, directed to an overarching approach of harm minimisation:³⁴
- (i) demand reduction;
 - (ii) supply reduction; and
 - (iii) harm reduction.
- (g) We note that the objective of supply reduction is not prohibition but regulation to allow the responsible and safe supply and consumption of alcohol.³⁵ In terms of supply reduction in relation to alcohol, the National Drug Strategy states:³⁶

For alcohol, this means that liquor licensing, planning authorities, local government, licensed venues and retailers need to be involved. Parents and families also have a role in reducing the supply of alcohol to minors. A wide range of business retailers need to be involved in regulatory and collaborative approaches to reducing harms from alcohol.

- (h) Objective 2 under the pillar of supply reduction is "control and manage the supply of alcohol, tobacco and other legal drugs". In relation to this objective the National Drug Strategy says:

Regulation of the sale of alcohol focuses on who can sell alcohol, to whom and when, by ensuring that alcohol is sold only to adults and only by licensed premises and liquor retailers. State, territory and local government regulations control these and other conditions of sale in the community, to minimise the negative social impact of alcohol. Licensees and hospital workers have a responsibility for limiting supply to intoxicated people or removing them from licensed premises with the assistance of licensing inspectors and police. Parents, siblings, and friends are the main sources of supply of alcohol to young people and therefore have a key role to play in reducing access to alcohol by this group.

³⁴ National Drug Strategy, Executive Summary, p ii.

³⁵ In its submission to the Standing Committee the Northern Territory Government said (p.31): "Blanket supply restrictions have been less successful in terms of sustainability and have resulted in other harms such as drinking in unsafe places on highways and far away from communities, where families and support services cannot monitor harms, and where drinkers are at increased risk of road accidents. It also contributes to marginalisation and dislocation of Aboriginal people and families."

³⁶ National Drug Strategy, p 13.

- (i) The resource paper produced for the Closing the Gap Clearinghouse by Gray and Wilkes, *Reducing alcohol and other drug related harm* says that there is '*well-established positive relationship between the supply of AOD [alcohol and other drugs], levels of consumption and related harm (Babor 2010).*³⁷ The forms of supply reduction measures described in that paper as being effective in reducing alcohol-related harm are:³⁸
- (i) price controls;
 - (ii) reductions in trading hours;
 - (iii) reduction in outlet density;
 - (iv) dry community declarations;
 - (v) local dry area alcohol bans;
 - (vi) liquor licensing accords;
 - (vii) laws against sale of alcohol to minors;
 - (viii) laws against serving intoxicated persons; and
 - (ix) laws against driving under the influence of alcohol.
- (j) These measures are mostly provided for by the Liquor Act. With respect to price controls, we note the view of the Commonwealth expressed in the Department of the Prime Minister and Cabinet submission to the Standing Committee.³⁹
- Internationally, price controls have been found to be the most effective intervention of this type [restricting supply]. However, the Australian Government does not support policies that increase alcohol prices ... as they do not target heavy and binge drinkers. These drinkers are less responsive to price than the general population, so higher prices may have a limited health benefit and hurt consumers who enjoy alcohol responsibly.*
- (k) In contrast the Standing Committee Report noted strong support for the introduction of a volumetric tax on alcohol as well as a minimum or floor price.⁴⁰
- (l) Gray and Wilkes note that the effectiveness of laws for the restriction of supply of alcohol depends in large part upon enforcement, but enforcement needs to be sensitive to local social and cultural contexts.⁴¹
- (m) It is clear that legislation measures that regulate alcohol supply provide the basis upon which other supply reduction measures are taken. The National Drug Strategy, however, describes the other pillars as equally important in the overall objective of harm minimisation.⁴² Demand reduction involves strategies and actions which prevent the uptake and/or delay the onset of use of alcohol, tobacco and other drugs, reduce the misuse of alcohol and the use of tobacco and other drugs, and support people to recover from dependence and reintegrate with the community.⁴³ Harm reduction involves

³⁷ Resource sheet no.3, *Reducing alcohol and other drug related harm*, produced for the Closing the Gap Clearinghouse, Denis Gray and Edward Wilkes, December 2010, pp 4-5.

³⁸ *Ibid*, pp 5-6.

³⁹ At p 8.

⁴⁰ Standing Committee Report, p 39.

⁴¹ Gray and Wilkes, p 6.

⁴² National Drug Strategy, p 2.

⁴³ *Ibid*.

strategies and actions that primarily reduce the adverse health, social and economic consequences of the use of drugs. While it is noted that the measures for minimisation of harm to Aboriginal people in the Northern Territory from alcohol extend beyond the regulation of alcohol by way of the laws under review, and the implementation of those laws, and include measures associated with demand reduction and harm reduction, we make no findings regarding the effectiveness of those other measures: it is not within the scope of this review to consider measures other than the laws under review. Nor, however, have we been able to determine the effectiveness (or otherwise) of the laws themselves, separated from those other measures, in addressing the determinants of alcohol-related harm to Aboriginal people in the Northern Territory, other than to note that the Liquor Act, Liquor Regulations and provisions of the Stronger Futures Act provide for a comprehensive scheme for the regulation of supply of alcohol.

- (n) We have concluded, broadly, that the scheme for the regulation of supply of alcohol in the Northern Territory is sufficiently comprehensive and appropriately adapted to the circumstances of the Northern Territory to provide a proper framework for addressing alcohol-related harm. We have not been able to identify any specific 'gaps' in that scheme that should give rise to amendments to the Liquor Act. Relevantly, we note that a 2011 report by the National Centre for Education and Training on Addiction, drew the following conclusions about liquor regulation across the Australian States and Territories:⁴⁴
- (i) despite the differences that exist in liquor licensing legislation across Australia there were strong common themes across all jurisdictions;
 - (ii) appropriate governance arrangements are pivotal to the administration of liquor licensing legislation in Australia;
 - (iii) trading hours for licensed premises were legislated in all states;
 - (iv) all Australian jurisdictions had provisions in their liquor licensing legislation that allowed licensees, police, courts and government authorities to prohibit certain people from attending licensed premises;
 - (v) all jurisdictions provided a method by which to instigate disciplinary proceedings against licensees. In some states and territories, this was an unlimited right, while in others, the right was invested in designated people and bodies;
 - (vi) serving and supplying an intoxicated and/ or drunk person was an offence in every state and territory. There were, however, differences among jurisdictions in regard to how the terms drunk and intoxicated were defined, the context in which those terms were used and the elements needed to prove that an offence had been committed;
 - (vii) lockout conditions had been adopted in some Australian jurisdictions in an attempt to increase community safety by reducing high levels of alcohol-related problems in specific areas.
- (o) It therefore appears that the scheme in operation in the Northern Territory is consistent with alcohol regulation operating elsewhere in Australia.

⁴⁴ NCETA (2011) Liquor Licensing Legislation in Australia: Executive Summary – An examination of Liquor Licensing Legislation in Australia as at December 2010, p 9

13.2 Increased regulation on alcohol in prescribed areas

- (a) As discussed above in the legislative summary, items 5 and 6 of Schedule 1 to the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* (Cth) cause areas that were prescribed areas under the Emergency Response Act to become alcohol protected areas for the purposes of the Stronger Futures Act. Under s 9 of the Stronger Futures Act those alcohol protected areas are treated as general restricted areas, as defined in the Liquor Act. No further areas have been prescribed as alcohol protected areas under s 27 of the Stronger Futures Act, and no rules have been made under s 27 to cause an existing alcohol protected area to cease to be an alcohol protected area.
- (b) As is also discussed above, where an area is an alcohol protected area the Liquor Act operates in that area as modified by section 8 of the Stronger Futures Act. As general restricted areas under the Liquor Act, those areas are also subject to increased regulation under the Liquor Act.
- (c) Under ss 12 and 13 the Commonwealth Minister may modify liquor licences and liquor permits that are in effect in alcohol protected areas. We are not aware of any instances by which these provisions have been utilised to modify any liquor licences or liquor permits. It is likely that this arises from the fact that it is the Northern Territory that is primarily responsible for regulating controls on alcohol supply – a principle that is acknowledged in the submission to the Standing Committee by the Department of the Prime Minister and Cabinet.⁴⁵ We would anticipate that these provisions would have, in the normal course, very little effect upon the regulation of supply of alcohol in Aboriginal communities.
- (d) We have not had the benefit of evidence from individual communities in order to understand the particular effect of the continued prescription of the relevant areas as alcohol protected areas (and general restricted areas) within communities in those areas. We note, however, the comments of the Northern Territory Government in its submission to the Standing Committee:⁴⁶

GRAs [General restricted areas] have been used in the NT since 1979. They have proved to be an efficient and effective way of managing the supply of alcohol into communities, particularly where those communities are geographically isolated.

"Once a GRA is declared, the Commission is able to issue a permit to an individual allowing them to possess, and consume alcohol in that area. Often, as a result of community consultation, a permit system is established and a local permit committee created, made up of community members and local stakeholders. The permit committee proposes the conditions and the basis upon which permits can be issued and revoked. While there a high number of GRA's throughout the NT, the number of established permit systems is relatively low.

- (e) We also note the sentiments expressed by respondents to the Stronger Futures Consultations, which largely supported specific alcohol restrictions in the communities.⁴⁷
- (f) In light of our conclusion above, that alcohol continues to be a source of considerable harm to Aboriginal people in the Northern Territory, we consider that the provision that is made for the prescription of areas as prohibited alcohol areas and general restricted areas are appropriate measures for the effective regulation of alcohol supplies within Aboriginal communities in the Northern Territory.

⁴⁵ At p 8.

⁴⁶ Northern Territory Government Submission, p 9.

⁴⁷ Report on Consultations, p 35-42.

13.3 Community based alcohol management

- (a) The community centred approach to alcohol management of the laws under review is extended by the provision that is made for the development of community based alcohol management plans.
- (b) As noted above, Division 6 of Part 2 of the Stronger Futures Act deals with alcohol management plans and provides a process for the approval of alcohol management plans by the Commonwealth Minister.
- (c) If the Commonwealth Minister approves an alcohol management plan, the area covered by the plan becomes a 'community managed alcohol area'. That status, however, does not otherwise affect the application of the Stronger Futures Act or the Liquor Act in that area, except that it requires the Commonwealth Minister to consider making a rule that would cause the area to cease to be an alcohol protected area under the Stronger Futures Act (and thereby a general restricted area under the Liquor Act).
- (d) We understand from our review that community driven alcohol management is strongly supported. The Northern Territory Government in its submission to the Standing Committee said of alcohol management plans that:⁴⁸

Alcohol Management Plans (AMP) are place-based strategies which aim to deliver local responses to alcohol issues at a local community, sub regional or regional level. AMPs aim to minimise the nature and extent of harm caused by the consumption of alcohol through supply, demand and harm reduction strategies. AMPs are developed by local stakeholders including community members, local government, non-government organisations, treatment and health service providers, Police, Aboriginal organisations, business, licensees and staff responsible for the delivery of government services. Alcohol Reference Groups made up of community members and local stakeholder representatives oversee the development, implementation, management, monitoring and review of the AMP.
[references deleted]

- (e) The Northern Territory Government also discusses the success of alcohol management plans and other forms of community driven alcohol management in Maningrida, Tennant Creek, Groote Eylandt and Nhulunbuy/East Arnhem as giving rise to the adoption of AMPs as a key strategy in the Northern Territory for addressing alcohol-related harm.⁴⁹ The success of alcohol management plans has also been reported by the Menzies School of Health Research.⁵⁰
- (f) However, the Northern Territory Government also suggests that improvements can be made to the process for assessing alcohol management plans against the minimum standards, approving plans under the Stronger Futures Act and supporting communities taking responsibility for dealing with alcohol problems. It is also suggested that the Stronger Futures Act provisions result in confusion and delays in having local initiatives and alcohol management systems approved and put in place.
- (g) Without further information concerning any difficulties arising from the Stronger Futures Act provisions concerning approval of alcohol management plans we are unable to comment on the effectiveness, or lack of effectiveness, of these provisions in reducing alcohol-related harm. However, it is unclear to us how, even in the event of delays in

⁴⁸ NT Government submission, p 24.

⁴⁹ Ibid.

⁵⁰ Ibid.

approval, the Stronger Futures Act provisions inhibit implementation of an alcohol management plan that has been negotiated and agreed at a local level. We note, again, that the only effect of approval of an alcohol management plan under the Stronger Futures Act is to give rise to a requirement that the Minister consider causing the area covered by the plan to cease to be a alcohol protected area. On the other side, it appears to us that identification in legislation of requirements for an alcohol management plan may be an effective means of establishing appropriate standards for an alcohol management plan that if followed would, presumably, cause a relevant plan to obtain the support of government in its implementation. Furthermore, the minimum standards set out in the Alcohol Management Plan Rules largely match the requirements of an alcohol management plan discussed by the Northern Territory Government in its submission to the Standing Committee.

- (h) Without the benefit of any more specific information regarding the development of alcohol management plans, and the effect of the Stronger Futures Act provisions on the development of those plans, we are unable to make any recommendations concerning any amendments to the legislation that may allow the alcohol management plan provisions to operate more effectively.