



Express law fast track information for clients

6 September 2007

THE NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE PACKAGE

Measures to address the national emergency arising out of child abuse and other issues in Indigenous communities in the Northern Territory were announced by the Prime Minister on 21 June 2007. Five Bills were introduced into Parliament on 7 August 2007 and all were passed by 17 August 2007. Royal Assent was given on 17 August 2007.

The three Acts which give effect to the measures are set out below. (The remaining two Acts, which are not dealt with here, are the *Appropriation (Northern Territory National Emergency Response) Act (No. 1) 2007-2008* and the *Appropriation (Northern Territory National Emergency Response) Act (No. 2) 2007-2008*.)

Northern Territory National Emergency Response Act 2007

The [*Northern Territory National Emergency Response Act 2007*](#) (the NTNER Act) covers measures related to alcohol, publicly funded computers, land, community governance, bail and sentencing, and community stores. Unless otherwise specified, all of these measures will cease to have effect at the end of five years after the day after Royal Assent.

Alcohol measures

Part 2 of the NTNER Act modifies the *Liquor Act (NT)* to restrict the possession, consumption, sale and transportation of liquor, particularly on land in prescribed areas. Prescribed areas comprise most 'Aboriginal land' within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (the Land Rights Act) (including roads, rivers, estuaries and other areas otherwise excluded by that Act), community living areas granted under the *Lands Acquisition Act (NT)*, and any town camps in the Northern Territory which are identified by declaration.

Pornography measures

Part 3 of the NTNER Act introduces a scheme of accountability aimed at preventing and detecting the misuse of publicly funded computers (as defined) located in prescribed areas in the Northern Territory. A person in control of a publicly funded computer is required to have a filter installed on the computer to prevent and record access to illegal material; undertake six monthly audits of material on, or accessed by, the computer; and provide the results of audits to the Australian Crime Commission.

Land measures

Acquisition of five-year leases by the Commonwealth: Part 4 of the NTNER Act provides for the Commonwealth to acquire, by force of the legislation, five-year leases over the land identified in Schedule 1. Generally, the underlying tenure of the relevant landowner is unchanged. Commencement dates of the leases vary to enable the acquisitions to be rolled out over a period of six months. Land in other communities can be added by regulation, but any lease ends five years after the commencement of this part.

Conferral of powers on the Commonwealth in relation to town camps: The Commonwealth Minister has the powers of the Northern Territory Minister or the Administrator under the *Special Purposes Leases Act (NT)* and the *Crown Lands Act (NT)* to forfeit leases over, or resume, land identified in Part 4 of Schedule 1. Further town camps can be added by regulation. Power is also conferred on the Commonwealth to acquire the freehold title in the land identified in Part 4 of Schedule 1, whether or not the powers to forfeit leases or resume the land have been exercised. These powers may be exercised only for a period of five years after the day after Royal Assent.

Effect of Commonwealth and Northern Territory laws: The *Lands Acquisition Act 1989 (Cth)* and other Commonwealth and Northern Territory laws have no application to the acquisitions mentioned above. Land trusts are able to continue to negotiate leases under section 19 of the Land Rights Act, but the consent of the Minister is required. The future act provisions in the *Native Title Act 1993 (Cth)* do not apply to the acquisitions or to related actions, but the 'non-extinguishment principle'—that is, that the validity of these actions is not affected by any native title that exists and that any native title is suppressed but not extinguished—applies.

Compensation for acquisition: Part 4 includes specific provision for the payment of reasonable compensation if the operation of the part, or any act done in relation to the land affected by the part, results in an acquisition of property otherwise than on just terms within the meaning of the Constitution. (The NTNER Act also contains a general provision ensuring the payment of reasonable compensation for an acquisition of property arising out of other parts of the Act.) Provision is also made for certain matters to be taken into account in determining reasonable compensation.

Part 4 continues to have effect after the end of the period of five years from the date of commencement.

Business management areas

The Commonwealth will appoint government business managers in targeted communities. To facilitate their role in improving governance in communities, Part 5 of the NTNER Act includes the following provisions:

- a power enabling the Commonwealth to terminate funding agreements at will
- a power enabling the Commonwealth to vary funding agreements in relation to particular matters
- a power enabling the Minister to give directions about assets and services in particular circumstances
- a power enabling the Minister to appoint observers to community services entities
- powers enabling the Commonwealth to intervene in the management of community government councils and incorporated associations which provide services to targeted communities.

Bail and sentencing reforms

Part 6 of the NTNER Act amends Northern Territory law to require relevant authorities, when exercising bail or sentencing discretion in relation to Northern Territory offences:

- not to take into account any form of customary law or cultural practice to lessen or aggravate the seriousness of criminal behaviour
- to take into account the potential impact on victims and witnesses in remote communities of granting bail.

Part 6 continues to have effect after the end of the period of five years from the date of commencement.

Community stores measures

Part 7 of the NTNER Act introduces a new licensing regime for the operators of community stores in Indigenous communities. Licences will be granted by the Secretary of the Department of Families, Community Services and Indigenous Affairs based primarily on the assessable matters set out in the legislation. Where a community store licence is withheld from a store operator, or is revoked, the Minister may declare that certain assets and liabilities of the store vest in the Commonwealth. This measure is linked to the introduction of income management for welfare recipients, because a proportion of targeted persons' income will be directed to the community stores.

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007

The [*Families, Community Services and Indigenous Affairs and Other Legislation Amendment \(Northern Territory National Emergency Response and Other Measures\) Act 2007*](#) (the FaCSIA Amendment Act) makes amendments to other legislation to provide for pornography and law enforcement measures, infrastructure and reforms to the permit system. Unless otherwise specified, all of these amendments are ongoing and continue to have effect after the end of the period of the emergency response.

Prohibited material

Schedule 1 inserts new Part 10 into the *Classification (Publications, Films and Computer Games) Act 1995* (Cth), banning the possession of pornographic material within prescribed areas and prohibiting the supply of pornographic material in prescribed areas. The new part also gives police all necessary powers in prescribed areas to seize and destroy material which may be prohibited under the new Part 10. The prescribed areas referred to are the same as the prescribed areas in the NTNER Act. Provision is made for the payment of compensation in the event that Part 10 results in an acquisition of property in the constitutional sense.

New Part 10 takes effect on the 28th day after Royal Assent. It ceases to have effect at the end of five years after the day after Royal Assent of the NTNER Act.

Law enforcement

Schedule 2 of the FaCSIA Amendment Act amends Commonwealth law enforcement legislation to facilitate the implementation of the Government's emergency measures. The *Australian Crime Commission Act 2002* (Cth) is amended to allow the Australian Crime Commission to undertake intelligence operations and investigations into Indigenous violence or child abuse. The *Australian Federal Police Act 1979* (Cth) is amended to make it clear that members of the Australian Federal Police deployed to the Northern Territory Police (NTPOL) are able to exercise the powers and duties of a member of the NTPOL.

Infrastructure

Schedule 3 of the FaCSIA Amendment Act amends the Land Rights Act and provides for the Commonwealth, Commonwealth authorities, the Northern Territory and Northern Territory authorities to retain a continuing interest in buildings and infrastructure constructed or upgraded on Aboriginal land where they fund the construction or major upgrade and where the land council for the area consents to the construction or upgrade.

The continuing interest takes the form of specified statutory rights and the buildings and infrastructure are deemed to be the property of the government or authority

which has the statutory rights. Where there are multiple funding sources, the schedule sets out a mechanism to determine who will have the statutory rights. The schedule also makes provision for the statutory rights to come to an end in certain circumstances.

The schedule generally requires the person who has the statutory rights and the land council concerned to negotiate in good faith for the grant of a lease under section 19 of the Land Rights Act.

Access to Aboriginal land

Schedule 4 of the FaCSIA Amendment Act amends the Land Rights Act and makes changes to the provisions governing access to Aboriginal land to increase interaction with the wider community and promote economic activity. New sections 70A to 70H are added to the Land Rights Act to remove the requirement for people to obtain permits to enter and remain on certain areas of Aboriginal land, including common areas of certain communities, road corridors to those communities, and airstrips and boat landings servicing those communities. Provision is included to enable government officials and others to enter or remain on Aboriginal land, and for temporary restrictions to be put on access to these areas, in certain circumstances. It also allows the Minister to authorise a person to enter or remain on Aboriginal land during the period of the emergency response.

Provision is made for the payment of reasonable compensation if the operation of the schedule or actions taken under or in accordance with new provisions of the Land Rights Act results in an acquisition of property otherwise than on just terms.

Miscellaneous

Schedule 5 of the FaCSIA Amendment Act also makes several minor amendments to the Land Rights Act and amends the NTNER Act (at the time when the access changes come into effect) to provide that the Commonwealth's exclusive possession and right to quiet enjoyment of land under five-year leases is subject to the access rights provided by new sections 70C to 70G of the Land Rights Act.

Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007

The [*Social Security and Other Legislation Amendment \(Welfare Payment Reform\) Act 2007*](#) (Cth) inserts new Part 3B into the *Social Security (Administration) Act 1999* (Cth) to establish a national income management regime that may apply to a person in receipt of certain welfare payments if:

- the person lives in a declared relevant Northern Territory area
- a child protection officer of a State or Territory requires the person to be subject to the income management regime

- the person, or the person's partner, has a child who does not meet school enrolment requirements
- the person, or the person's partner, has a child who has unsatisfactory school attendance or
- the Queensland Commission (the body or agency established by Queensland law specified in a legislative instrument by the Minister) requires the person to be subject to the income management regime.

The part of the affected person's payment that is subject to income management will generally be used to pay the priority needs of that person, their partner and their children. In addition, baby bonus will be paid in 13 fortnightly instalments to claimants who are subject to the income management regime.

In the case of the Northern Territory emergency response, the income management regime will apply in respect of all people in the declared communities in the Northern Territory who are in receipt of certain welfare payments for a period of five years from commencement of the provisions. But income management extends beyond the emergency response in the Northern Territory and the provisions can apply generally where children are at risk or do not meet school requirements. In addition, the provisions facilitate the trial of income management in Queensland in certain communities on Cape York until 1 January 2012.

Northern Territory CDEP transitional payment

From September 2007, the Community Development Employment Projects (CDEP) program in the Northern Territory will progressively be replaced with other employment services. The Act includes provision for a transition payment to CDEP participants who move onto income support in the Northern Territory.

Racial Discrimination Act 1975

The provisions of the NTNER Act and the FACSIA Amendment Act and any acts done under or for the purposes of those provisions:

- are deemed to be special measures for the purposes of the *Racial Discrimination Act 1975*
- are excluded from the operation of Part II of that Act.

Similarly, new Part 3B of the Social Security (Administration) Act, and all actions and omissions in any way related to it or the income management regime, are deemed to be special measures and are excluded from the operation of Part II of the Racial Discrimination Act in relation to specified persons, as are certain acts of the Queensland Commission and any provisions of Queensland laws or any acts done by Queensland in relation to the establishment or operation of the Queensland Commission.

For further information please contact:

Ros Kenway
Senior General Counsel
T 02 6253 7078 F 02 6253 7304
ros.kenway@ags.gov.au

Peter Jeffery
Senior General Counsel
T 02 6253 7091 F 02 6253 7304
peter.jeffery@ags.gov.au

Kym Lockley
Senior Executive Lawyer
T 02 6253 7461 F 02 6253 7316
kym.lockley@ags.gov.au

Helga Johnsen
AGS Counsel to Land Branch, FaCSIA
T 02 6121 4231 F 02 6121 4150
helga.johnsen@ags.gov.au

Important: The material in *Express law* is provided to clients as an early, interim view for general information only, and further analysis on the matter may be prepared by AGS. The material should not be relied upon for the purpose of a particular matter. Please contact AGS before any action or decision is taken on the basis of any of the material in this message.

This message may contain confidential or legally privileged information. Only the addressee has the right to use or disseminate this information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS. Find out more about AGS at <http://www.ags.gov.au>.

If you do not wish to receive similar messages in the future, please reply to:
<mailto:unsubscribe@ags.gov.au>