



Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007

Sue Harris Rimmer and Bronwen Jagers
Law and Bills Digest Section

Contents

| | |
|--|---|
| Purpose..... | 1 |
| Background..... | 2 |
| Financial implications..... | 3 |
| Standing appropriations | 3 |
| Main provisions | 3 |
| Schedule 1—R 18+ Programs—Amendment of the <i>Broadcasting Services Act 1992</i> | 3 |
| Schedule 2—Residential Tenancies—Amendment of the <i>Northern Territory National Emergency Response Act 2007</i> | 6 |
| Schedule 3—Defence Housing Australia—Amendment of the <i>Defence Housing Australia Act 1987</i> | 7 |
| Schedule 4—Land Rights—Amendment of the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> and <i>Northern Territory National Emergency Response Act 2007</i> | 8 |

| | |
|--|----|
| Executive Director of Township Leasing..... | 8 |
| Statutory rights over buildings and infrastructure | 8 |
| Land Councils and fees | 9 |
| Other amendments..... | 10 |
| Schedule 5—Acquisition of rights, titles and interests in land—Amendment of the Northern Territory National Emergency Response Act 2007 | 10 |
| Section 31 lease over Canteen Creek | 10 |
| Grants of interests by Land Trusts..... | 11 |
| Future Act provisions in the Native Title Act | 11 |
| Agreement on amounts in respect of five-year leases | 12 |
| Schedule 6—Community Stores—Amendment of the <i>Northern Territory National Emergency Response Act 2007</i> | 12 |
| Concluding comments | 13 |

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007

Date introduced: 20 September 2007

House: House of Representatives

Portfolio: Families, Community Services and Indigenous Affairs (FACCSIA)

Commencement: Schedule 1 commences on the 35th day after Royal Assent. Schedules 2 and 3, items 1-19 and 22-24 of Schedule 4, and Schedules 5 and 6 commence the day after Royal Assent. Schedule 4, items 20 and 21 commence on proclamation (linked to item 12 of Schedule 4 of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Emergency Response and Other Measures) Act 2007*).¹

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

See also the [Senate inquiry into the NT Bills](#).

Purpose

The purpose of the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007 (the Bill) is to amend the policy regime set up by the legislative regime known as the Northern Territory (NT) Emergency Response package. The Bill would make six key changes, as follows.

- **Schedule 1** would amend the *Broadcasting Services Act 1992* to prohibit the provision of television programs rated R 18+ in prescribed areas of the Northern Territory.
- **Schedule 2** would amend the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Emergency Response and Other Measures) Act 2007* to displace existing NT law in relation to residential tenancies where the Commonwealth is a party. This means the Commonwealth is not liable for any existing obligations such as repair and maintenance under NT law.

1. As at 11 October 2007, item 12 has not been proclaimed. Item 12 contains sections 70A-70H of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Emergency Response and Other Measures) Act 2007* relating to entering or remaining on Aboriginal land.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- **Schedule 3** gives the Defence Housing Australia (DHA) the ability to assist FACSIA in delivering housing to NT areas by amending the *Defence Housing Australia Act 1987*.
- **Schedule 4** makes a series of amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*, including new provision for Land Councils to charge the Commonwealth a fee for negotiating suspension of lease agreements. Section 63 of the *Northern Territory National Emergency Response Act 2007* is also amended so that any of these fees can be payable out of the Consolidated Revenue Fund.
- **Schedule 5** makes amendments to Part 5 of the *Northern Territory National Emergency Response Act 2007* in relation to the acquisition of rights, titles and interests in land.
- **Schedule 6** amends the definition of 'roadhouse' in paragraph 92(2)(b), Part 7—Licensing of Community Stores in the *Northern Territory National Emergency Response Act 2007*, so that roadhouse is covered by the definition of 'community store' if 'an Indigenous community is substantially dependent upon the roadhouse for the provision of grocery items and drinks' (**item 1**).

Background

The background to this Bill can be found in the Digests prepared on the package of Northern Territory Emergency Response Bills. Five Bills were introduced to the Parliament as a package on 7 August 2007 and passed on 16 August 2007. The resulting Acts are:

- *Northern Territory National Emergency Response Act 2007* (the Emergency Act)
- *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Emergency Response and Other Measures) Act 2007* (the Families Act)
- *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (the Welfare Payment Act)
- *Appropriation (Northern Territory National Emergency Response) Act (No. 1) 2007-2008*, and
- *Appropriation (Northern Territory National Emergency Response) Act (No. 2) 2007-2008*.

The Bills Digest for the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (the Families Bill) is available [here](#).² The Bills Digest for the

2. Sue Harris Rimmer, Bronwen Jagers, Diane Spooner, Kirsty Magarey, Mary Anne Neilsen and John Gardiner-Garden, 'Families, Community Services and Indigenous Affairs and Other

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Northern Territory National Emergency Response Bill 2007 (the Emergency Bill) is available [here](#).³

Financial implications

Standing appropriations

The Explanatory Memorandum says that there is no impact for the financial year 2007-08.⁴ However, the amendments made by **item 24 in Schedule 4** would effect the special standing appropriation enacted by the Emergency Act 2007.

This extension of the existing special (standing) appropriation under section 63 of the NT NER Act is appropriate because amounts payable by the Commonwealth under new section 33B, and the timing of those payments, cannot be predicted in a way that would make an annual appropriation suitable.⁵

Main provisions

Schedule 1—R 18+ Programs—Amendment of the *Broadcasting Services Act 1992*

Schedule 1 would amend the *Broadcasting Services Act 1992* to prohibit the provision of television programs rated R 18+ in prescribed areas of the Northern Territory. The Explanatory Memorandum states that field workers since the emergency response commenced had confirmed research published in the *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred': The Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, authored by Pat Anderson and Rex Wild (the Anderson/Wild report)⁶ that subscription-based R 18+ programs provided by Austar United Communications Ltd (Austar) appeared to be readily accessible to children in Northern Territory Indigenous communities.⁷

Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007', [Bills Digest no. 21 2007–08](#), 13 August 2007.

3. Kirsty Magarey, Diane Spooner, Sue Harris-Rimmer, Patrick O'Neill, Moira Coombs, Bronwen Jagers, Juli Tomaras, PaoYi Tan, Coral Dow, John Gardiner-Garden, and Rhonda Jolly, Northern Territory National Emergency Response Bill 2007', [Bills Digest no. 28 2007–08](#), 13 August 2007.
4. Explanatory Memorandum, p. 2.
5. Explanatory Memorandum, p. 16.
6. Available at http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf (accessed 24 September 2007).
7. Explanatory Memorandum, p. 2.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The Emergency and Families Acts sought to filter public computers and ban pornography in the prescribed areas of the NT.⁸ The Senate Legal and Constitutional Affairs Committee cites concerns raised by the Festival of Light and other Christian groups that the internet filtering provisions and restrictions on pornography in Indigenous areas of the NT did not go far enough.⁹

The Committee commented in their final report on the NT Bills that it will be important to carefully monitor the measures in the Emergency Bill dealing with the possession and supply of X 18+ films to assess their effectiveness in preventing child abuse. The Committee reported that:

Given the ready access to X18+ films under the Northern Territory's *Classification of Publications, Films and Computer Games Act*, which will continue to apply outside the prescribed areas, these measures may not be sufficient to achieve the objective.

Consideration may need to be given to extending the prohibition on the possession and sale of X18+ films throughout the Northern Territory, or to cutting off the supply of such films at their source through an amendment to the *Customs (Prohibited Imports) Regulations 1956*, a prohibition on the carriage of X18+ films by a carrier service or even a prohibition on the production and sale of X18+ films in the Australian Capital Territory.¹⁰

These amendments do not go that far. The provisions instead prohibit any subscription television narrowcasting service from providing television programs that are rated R 18+ to subscribers who receive the service in prescribed areas, as defined in section 4 of the Emergency Act. This would be achieved through the addition of a new licence condition in Part 7 of Schedule 2 to the *Broadcasting Services Act 1992*.

Items 1 and 2 make amendments to the criminal offence and civil penalties provisions in the Broadcasting Services Act that apply to breaches of a subscription narrowcasting television licence condition. The maximum criminal penalty is 50 penalty units (\$5 500), or five times that if a corporation is responsible for the relevant breach.

Item 3 adds a new licence condition to the end of Part 7 of Schedule 2 to the Broadcasting Services Act that applies only to particular subscription television narrowcasting services

-
8. Schedule 1 of the Families Act amended *Commonwealth Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act) to prohibit the possession, control and supply of pornography in 'prescribed areas'.
 9. Senate Legal and Constitutional Affairs Committee, *Inquiry into Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, 13 August 2007, p. 29.
 10. Senate Legal and Constitutional Affairs Committee, op. cit., p. 32.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

that provide services to a subscriber who is in a prescribed area of the Northern Territory. **(proposed subclause 12(1)).**

Proposed subclause 12(2) inserts a sunset clause, by providing that the proposed licence condition be repealed after five years, or on an earlier date (if any) specified in a legislative instrument made by the Minister. The Explanatory Memorandum states:

The sunset provision is appropriate in light of the fact that this licence condition is designed to respond to an emergency situation currently faced by many children in the Northern Territory. It is appropriate to enable this emergency response measure to be repealed as soon as the measure is no longer needed – this should be within the five-year ‘outer limits’ period specified in paragraph 12(2)(a).¹¹

Proposed subclause 12(3) provides that the Minister’s instrument to repeal the licence condition is exempt from disallowance by Parliament under section 42 of the *Legislative Instruments Act 2003*. The Explanatory Memorandum states:

Exemption from parliamentary scrutiny and possible disallowance is appropriate for the following reasons:

A similar non-disallowable ministerial repeal instrument was recently approved by Parliament when passing the NT Amendment Act. That Act inserted section 114 into the Classification (Films, Publications, and Computer Games) Act 1995 to enable the repeal of Northern Territory emergency response measures that prohibit the possession or supply of prohibited material (that is, pornography) in prescribed areas of the Northern Territory.

A repeal instrument that ‘sunsets’ legislation is analogous to a proclamation commencing legislation, and so should similarly not be disallowable by Parliament.

If Parliament were to disallow the repeal instrument, it would create confusion and uncertainty for subscription television licensees and subscribers who are affected by the licence condition concerned, to the extent that disallowance would ‘revive’ the licence condition and the rights and obligations that it entails.

The remaining clauses 13 to 15 will protect people (such as the licensee or the Australian Communications and Media Authority) who do things in relation to the additional licence condition from particular causes of action.¹²

Proposed clause 13 in Part 7 of Schedule 2 to the Broadcasting Services Act will declare the new licence condition and related provisions of the Broadcasting Services Act to be a ‘special measure’ for the purposes of the *Racial Discrimination Act 1975* (the RDA). See extended discussion of the RDA issues in the ‘Background’ section of the Bills Digest on

11. Explanatory Memorandum, p. 3.

12. Explanatory Memorandum, pp. 3–4.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

the Emergency Response Bill.¹³ See also the [submission](#) and evidence of the Human Rights and Equal Opportunity Commission to the Senate [inquiry](#).

The operation of Northern Territory anti-discrimination laws are excluded under **proposed clause 14**, however, the Minister may determine certain laws not to be excluded, by way of legislative instrument (**proposed subsection 14(3)**). **Proposed clause 15** excludes the guarantee that trade and commerce between the Northern Territory and other States shall be absolutely free in section 49 of the *Northern Territory (Self-Government) Act 1978* from the operation of these amendments.

Schedule 2—Residential Tenancies—Amendment of the *Northern Territory National Emergency Response Act 2007*

Schedule 2 proposes to amend the Families Act to displace existing NT law, namely the *Residential Tenancies Act (NT)* (the RTA) and the *Tenancy Act (NT)* (the Tenancy Act) in relation to residential tenancies where the Commonwealth is a party. This means the Commonwealth is not liable for any existing obligations such as repair and maintenance under NT law.

Existing section 31 of the Emergency Act provides for a lease to be granted to the Commonwealth over specified land in the Northern Territory (the five-year leases). Where a lease is granted under section 31, section 34 of the Emergency Act preserves any existing right, title or other interest in the land and provides that, where a right, title or interest was granted by the owner of the land, it will have effect as if granted by the Commonwealth. However, the changes proposed here in Schedule 2 of the Bill will exclude the Commonwealth's tenancy obligations under NT law.

Item 1 inserts **new Division 3A – Residential tenancies** into Part 4 of the Emergency Act. **Proposed new sections 59C and 59D** would provide that neither the RTA nor the Tenancy Act applies to tenancy agreements to which the Commonwealth is a party in respect of premises on leased land, and the Commonwealth is not subject to obligations regarding condition of the premises, or repair or maintenance of the premises. **Proposed subsection 59E** would provide that the Minister may declare via legislative instrument that all, or parts of, the RTA or the Tenancy Act are to apply tenancy agreements to which the Commonwealth is a party.

In his second reading speech the Minister stated:

13. Kirsty Magarey, Diane Spooner, Sue Harris-Rimmer, Patrick O'Neill, Moira Coombs, Bronwen Jagers, Juli Tomaras, PaoYi Tan, Coral Dow, John Gardiner-Garden, and Rhonda Jolly, Northern Territory National Emergency Response Bill 2007', [Bills Digest no. 28 2007–08](#), 13 August 2007.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

...the fact is that the Northern Territory government has not been enforcing these standards in these communities. Under the new legislation, the Commonwealth has become the landlord of what is often dilapidated housing stock. The Commonwealth simply cannot comply with the already in place Residential Tenancies Act obligations in the short term, although we are committed to bringing the quality of this housing to an acceptable standard as quickly as possible.

...this does not mean the Australian Government is avoiding its responsibilities as a landlord. It is simply to allow the response to do its proper work in making the substantial and essential improvements already announced, and to avoid any mischievous application of the Residential Tenancies Act by the Northern Territory Government.¹⁴

The Northern Territory Government has denied it has been a bad landlord.¹⁵

Schedule 3—Defence Housing Australia—Amendment of the *Defence Housing Australia Act 1987*

Schedule 3 gives [Defence Housing Australia](#) (DHA) the ability to assist FACSIA in delivering housing to NT areas by amending the [Defence Housing Australia Act 1987](#) (the DHA Act). The primary role of DHA is to provide housing to members of the Australian Defence Force and their families. However the scope of DHA was expanded in 2006 to enable it to provide services to other Australian Government agencies.¹⁶

The main change is found in **Item 5**, which inserts after subsection 6(1) of the DHA Act a second additional function for DHA: (**new subsection 6(1A)**) to assist an Agency (other than Defence) in relation to the delivery of a program that involves the provision of housing, or housing related services, to persons.

Items 9,10 and 11 make amendments to section 6 of the DHA Act to ensure that any assistance provided by DHA is subject to existing requirements in the DHA Act to ensure that DHA maintains its primary Defence focus.¹⁷

14. Hon. Malcolm Brough MP, Minister for Families, Community Services and Indigenous Affairs, 'Second Reading Speech: Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007' House of Representatives *Debates*, Parliament of Australia, 20 September 2007, p. 2.

15. *Northern Territory News*, 17 August 2007, p.4.

16. See Rosemary Bell: 'Defence House Authority Amendment Bill 2006', *Bills Digest* no. 129, 2005-06, Parliamentary Library, 19 May 2006.

17. Explanatory Memorandum, p. 11.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Schedule 4—Land Rights—Amendment of the *Aboriginal Land Rights (Northern Territory) Act 1976* and *Northern Territory National Emergency Response Act 2007*

Schedule 4 makes a series of amendments to the [Aboriginal Land Rights \(Northern Territory\) Act 1976](#) (the ALRA).

Executive Director of Township Leasing

The first series of amendments are regarding the position of Executive Director of Township Leasing. A scheme to facilitate Northern Territory township leasing was included in 2006 amendments to the ALRA.¹⁸ Under section 19A of the ALRA, a Land Trust may grant a 99 year lease of a township to an ‘approved entity’, which means either a Commonwealth or NT entity, if both the Minister and the Land Council agree to the granting of the lease.

In June 2007 the Commonwealth created the position of Executive Director of Township Leasing, claiming that the Northern Territory Government had failed to establish an ‘approved entity’ as required by 19A of the ALRA to administer 99-year leases.¹⁹ Schedule 4 of this Bill seeks to make some amendments to the functions of the Executive Director of Township Leasing.

Item 1 proposes to amend **section 20E** of the ALRA to allow the Executive Director to be appointed on a full-time or part-time basis (20E previously stipulated a full-time appointment). **Items 2 and 3** expand **sections 20H and 20K** respectively to place restrictions on outside employment for a part-time Executive Director, and to allow the Minister to approve a leave of absence for a part-time Executive Director.

Item 4 repeals and substitutes a **new section 20M** of the ALRA, dealing with termination of appointment. **New section 20M** will include a subsection providing that the appointment of a part-time Executive Director may be terminated if he or she engages in paid employment that conflicts or could conflict with the proper performance of his or her office.

Statutory rights over buildings and infrastructure

Items 5 and 8 repeal and substitute sections in the ALRA dealing with statutory rights, to provide that where the Commonwealth has statutory rights²⁰, the Minister may, on behalf

18. For a detailed background on these amendments see Jennifer Norberry and John Gardiner-Garden: ‘Aboriginal Land Rights (Northern Territory) Amendment Bill 2006’, [Bills Digest](#) no. 158, 2005-06, Parliamentary Library, 19 June 2006.

19. Bronwen Jagers, ‘Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007’, [Bills Digest](#) no. 165, 2006-07, Parliamentary Library, 29 May 2007.

20. These include the right to do works, occupy, use, maintain, repair or replace buildings and to occupy buildings and areas to mention a few.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

of the Commonwealth, permit a person to exercise the statutory rights. Similarly **items 6 and 9** allow the Minister to agree with a Land Council to vary the area over which statutory rights may apply. Under **items 7 and 10**, the Minister may determine that the buildings or infrastructure to which statutory rights apply are not longer required by the Commonwealth.

Item 22 inserts a **new subsection 76(1A)** to allow the Minister to delegate any of his or her functions or power under Part 11B of the Act, relating to statutory rights over infrastructure, to a Secretary or SES employee of his/her own department, or another department, or the General Manager of Indigenous Business Australia.

Land Councils and fees

Existing section 23 of the ALRA sets out the functions of Land Councils. Paragraph 23(1)(fa) states that a function of a Land Council is to negotiate, and enter into agreements, as necessary, for the purposes of subsection 70(4) (which deals with entry to Aboriginal land). **Item 12** of this Bill proposes to expand the functions of the Land Councils to include:

- **proposed 23(1)(fb)**: representation of the Land Trust in negotiations to agree on an amount to be paid to the Land Trust by the Commonwealth in respect of a section 31 lease arrangement under the Emergency Act
- **proposed 23(1)(fc)**: to represent a *relevant owner* (as defined by the Emergency Act) in negotiations to agree on an amount to be paid in respect of a section 31 Emergency Act lease
- **proposed 23(1)(fd)**: to represent a leaseholder in negotiations regarding the suspension of a section 40 Emergency Act lease.

Item 13 adds that the functions of Land Councils may be further expanded via the regulations.

Item 14 proposes to insert **new section 33B to the ALRA**, to permit a Land Council to charge certain fees. Existing section 33A allows Land Councils to charge fees for services provided in performing any of their functions, or exercising any of their powers, under the ALRA. Under **proposed section 33B**, a Land Council could charge the Commonwealth a fee for the reasonable expenses incurred by the Council in performing negotiations as provided for in **new paragraphs 23(1) (fb-fd)** outlined above. A Land Council may also charge a fee for other services as may be prescribed by the regulations in the future. The fee must not amount to taxation (**proposed section 33B(3)**). The total amount of fees received must be included in the Land Council's annual report (**item 19**). A fee payable by the Commonwealth will be payable from the Consolidated Revenue Fund (CRF) (**item 24**). The Explanatory Memorandum states that this is preferred over an annual appropriation because amounts payable by the Commonwealth under **new section 33B**,

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

and the timing of the payments, cannot be predicted in a way that would make an annual appropriation suitable.²¹

Item 18 amends **section 35(4)** of the ALRA, which stipulates that where a Land Council receives a payment in respect of Aboriginal land, it must, within 6 months after the payment is received, pay an amount equal to that payment to or for the benefit of the traditional Aboriginal owners of the land. **Item 18** amends subsection 35(4) to ensure that payments received in accordance with sections 60 and 62 of the Emergency Act must be distributed to the traditional owners.

Other amendments

Item 20 proposes to amend **subsection 70F(2)** to provide that the right of persons who seek to enter and remain on a common area that is within community land applies to common areas which are within a lease held by the Director of National Parks.

Item 21 proposes to insert **new section 70J**, to provide that the access rights in sections 70B to 70G may be subject to regulation under the *Environment Protection and Biodiversity Conservation Act 1999* and its regulations.

Note that both **items 21** and **22** only come into force once item 12 of Schedule 4 of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory Emergency Response and Other Measures) Act 2007* comes into force. Item 12 of that Act inserts sections 70A to 70H into the ALRA.

Item 23 seeks to repeal **subsection 52(8)** of the Emergency Act, as it will be made redundant by the amendment in **item 18**, outlined above.

Schedule 5—Acquisition of rights, titles and interests in land—Amendment of the Northern Territory National Emergency Response Act 2007

Schedule 5 to the Bill seeks to make amendments to Part 4 of the Emergency Act. Part 4 of that Act deals with acquisition of rights, titles and interests in land, most significantly the five-year leases assumed by the Commonwealth over Aboriginal communities and town camps. Many of the amendments are minor and technical in nature.

Section 31 lease over Canteen Creek

Item 2 proposes to repeal existing **subsections 38(1) and (2)** of the Emergency Act, which relate to the traditional land claim over Canteen Creek. **Proposed new subsection 38(1)** states that a grant of a five-year lease of Canteen Creek to the Commonwealth under section 31 of the Act has effect, despite section 67A of the ALRA. Further, the grant by the Commonwealth of any estate or interest in Canteen Creek also has effect despite section 67A of the ALRA. Section 67A of the ALRA provides that estates or interests are

21. Explanatory Memorandum, p. 16.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

not to be granted while land is subject to a traditional land claim. Canteen Creek is subject to a traditional land claim under the ALRA.²²

Proposed new subsection 38(2) clarifies that the grants provided under section 38 will not affect the traditional land claim over Canteen Creek.

Grants of interests by Land Trusts

Item 8 proposes to insert **new subsection 52(4A)**, relating to grants of interests by a Land Trust under the ALRA. Under current section 52 of the Emergency Act, Land Trusts may, with the consent of the Minister for Indigenous Affairs, continue to grant leases of land under section 19 of the ALRA, in spite of the five-year Commonwealth leases.

Section 19 of the ALRA allows Land Trusts to grant leases over land vested in it, including the granting of 99-year leases to the Commonwealth as provided by section 19A of the ALRA. For a full background on 99-year leases refer to the [Bills Digest](#) for the ALRA Amendment Bill 2006.²³

Under **proposed new section 52(4A)**, Land Trusts will be permitted to continue to grant interests (not leases), of a kind to be prescribed by regulation, over land leased by the Commonwealth under section 31 of the Emergency Act. **Item 9** proposes to repeal and substitute **subsection 52(5)** to clarify that only interests referred to in 52(1) and (4A) can be granted by Land Trusts while a five-year lease is in place.

Future Act provisions in the Native Title Act

Items 5 and 6 amend **paragraphs 51(1)(c) and (d)** respectively of the Emergency Act, replacing references to “on land” with “on or in relation to land”. Section 51 of the Act provides that the ‘future act’ provisions of the *Native Title Act 1993* will not apply to acts such as section 31 leases and vesting of rights under section 47 (see the [Bills Digest](#) on the Emergency Act for further detail on this).²⁴ The future act provisions provide certain procedural rights in relation to future acts while native title applications are being resolved. The non-extinguishment principle will apply by virtue of existing subsection 51(2) of the Emergency Act.

22. http://www.lyl.nt.gov.au/portal/page?_pageid=53,1394285,53_1780311&_dad=portal&_schema=PORTAL, accessed 3 October 2007.

23. Jennifer Norberry and John Gardiner-Garden, ‘Aboriginal Land Rights (Northern Territory) Amendment Bill 2006’, *Bills Digest* no. 158, 2005-06, Parliamentary Library, Canberra, 19 June 2006.

24. Kirsty Magarey et. al, ‘Northern Territory National Emergency Response Act 2007’, *Bills Digest* no. 28, 2007-08, 13 August 2007, Parliamentary Library, Canberra.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The amendment proposed here is to ensure that if the Commonwealth, the Northern Territory or an Authority (as under the ALRA) grants interests within the five-year lease period, the 'future act' provisions in the Native title Act 1993 do not apply.²⁵

Agreement on amounts in respect of five-year leases

Item 12 proposes to insert **new subsections 62 (1A) through to (1H)** into the Emergency Act. Section 62 deals with the payment of rent by the Commonwealth to the owner of land (other than the Northern Territory Government) which is subject to a section 31 five-year lease. The new subsections provide more detail on specific circumstances which may arise. For example, **proposed subsection 62(1B)** allows for the rent amount to be paid as a one-off payment or a periodic payment. **Proposed subsections 62(1D) through to (1F)** provide for the parties to agree on an amount to be paid in the case of termination or suspension of a lease. **Proposed subsection 62(1H)** provides that if the land owner is not being represented by the relevant Land Council, the Commonwealth must pay the reasonable expenses incurred in representing the other party in negotiations under new subsections 61(1A), (1D) or (1E), including the costs of hiring a person to represent them.

Schedule 6—Community Stores—Amendment of the *Northern Territory National Emergency Response Act 2007*

Schedule 6 amends the definition of 'roadhouse' in existing paragraph 92(2)(b), Part 7—Licensing of Community Stores in the *Northern Territory National Emergency Response Act 2007*.

Under existing section 92, the meaning of *community store* is as follows:

- (1) A business is a *community store* if:
 - (a) one of the main purposes of the business is the provision of grocery items and drinks; and
 - (b) the business is carried on:
 - (i) at premises in a prescribed area; or
 - (ii) at premises in an area or place in the Northern Territory that is specified by the Minister under subsection 123(1) for the purposes of this paragraph; or
 - (iii) at premises in the Northern Territory that are specified by the Minister under subsection 123(2) for the purposes of this paragraph.

25. Explanatory Memorandum, p. 17.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

(2) The following businesses are not *community stores*:

(a) a business that is solely a takeaway food shop or a fast food shop (including such a shop at which food can be consumed on the premises);

(b) a roadhouse;

(c) a business at premises in an area or place in the Northern Territory that is an area or place specified by the Minister under subsection 123(3) for the purposes of this paragraph;

(d) a business at premises specified by the Minister under subsection 123(4) for the purposes of this paragraph;

(e) a business of a kind prescribed by the regulations for the purposes of this paragraph.

Item 1 would amend the definition so that roadhouse is now covered by the definition of 'community store' if 'an Indigenous community is substantially dependent upon the roadhouse for the provision of grocery items and drinks'.

Concluding comments

The speed of the passage of the package of 'emergency response' bills through the Parliament has brought about the need for substantial amendments within a few months.

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: web.library@aph.gov.au. Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2526.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.