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

No.      , 2007

(Families, Community Services and Indigenous Affairs)

A Bill for an Act to amend laws in order to respond to the Northern Territory’s national emergency, and for other purposes
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A Bill for an Act to amend laws in order to respond
to the Northern Territory’s national emergency,
and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Families, Community Services and
Indigenous Affairs and Other Legislation Amendment (Emergency
Response Consolidation) Act 2007*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table
commences, or is taken to have commenced, in accordance with
column 2 of the table. Any other statement in column 2 has effect
according to its terms.
## Commencement information

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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this</td>
<td>The day on which this Act receives the Royal Assent.</td>
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<tr>
<td>2. Schedule 1</td>
<td>The 35th day after the day on which this Act receives the Royal Assent.</td>
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<td>The day after this Act receives the Royal Assent.</td>
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<td>Community Services and Indigenous Affairs and Other Legislation Amendment</td>
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<td>7. Schedules 5 and 6</td>
<td>The day after this Act receives the Royal Assent.</td>
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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—R 18+ programs

Broadcasting Services Act 1992

1 Paragraph 139(6)(c)
   After “11(1)”, insert “or 12(1)”.

2 Subsection 140A(6)
   After “11(1)”, insert “or 12(1)”.

3 At the end of Part 7 of Schedule 2
   Add:

12 Condition applicable to certain subscription television
   narrowcasting services provided in the Northern
   Territory under class licences

   (1) The provision by a person of a subscription television
   narrowcasting service under a class licence is also subject to the
   condition that the licensee will not broadcast an R 18+ program in
   a way that will enable a subscriber in a prescribed area (within the
   meaning of the Northern Territory National Emergency Response
   Act 2007) to view the program.

   Sunset provision

   (2) Subclause (1) ceases to have effect at whichever is the earlier of
   the following times:

   (a) the end of the period of 5 years that began on the day after
   the day on which the Northern Territory National Emergency
   Response Act 2007 received the Royal Assent;

   (b) if a shorter period is specified in a written instrument made
   by the Minister for the purposes of this paragraph—the end
   of that shorter period.

   (3) An instrument under paragraph (2)(b) is a legislative instrument,
   but section 42 (disallowance) of the Legislative Instruments Act
   2003 does not apply to the instrument.
Schedule 1  R 18+ programs

R 18+ programs

(4) For the purposes of this clause, an R 18+ program is:
(a) a program that has been classified R 18+ by the Classification Board; or
(b) a program that has been classified R 18+ by the provider of the subscription television narrowcasting service concerned.

13  Racial Discrimination Act

(1) Both:
(a) the following provisions:
   (i) clause 12;
   (ii) the remaining provisions of this Act in so far as they relate to clause 12; and
(b) any acts done under or for the purposes of those provisions; are, for the purposes of the Racial Discrimination Act 1975, special measures.

(2) Both:
(a) the following provisions:
   (i) clause 12;
   (ii) the remaining provisions of this Act in so far as they relate to clause 12; and
(b) any acts done under or for the purposes of those provisions; are excluded from the operation of Part II of the Racial Discrimination Act 1975.

(3) In this clause, a reference to any acts done includes a reference to any failure to do an act.

14 Some Northern Territory laws excluded

(1) The following provisions:
(a) clause 12;
(b) the remaining provisions of this Act in so far as they relate to clause 12;
are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as that law would otherwise apply.
(2) Any acts done under or for the purposes of the provisions of:
   (a) clause 12; or
   (b) the remaining provisions of this Act in so far as they relate to
       clause 12;
   have effect despite any law of the Northern Territory that deals
   with discrimination.

(3) However, subclauses (1) and (2) do not apply to a law of the
    Northern Territory so far as the Minister determines, by legislative
    instrument, that the law is a law to which subclauses (1) and (2) do
    not apply.

(4) In this clause, a reference to any acts done includes a reference to
    any failure to do an act.

15 Northern Territory (Self-Government) Act

   Section 49 of the Northern Territory (Self-Government) Act 1978
   does not apply in relation to the following provisions:
   (a) clause 12;
   (b) the remaining provisions of this Act in so far as they relate to
       clause 12.
Schedule 2—Residential tenancies

Northern Territory National Emergency Response Act 2007

1 After Division 3 of Part 4

Insert:

Division 3A—Residential tenancies

59A Definitions

In this Division:

*ancillary property* has the same meaning as in the RTA.

*RTA* means the *Residential Tenancies Act* of the Northern Territory.

*Tenancy Act* means the former *Tenancy Act* of the Northern Territory as continued in force by section 160 of the RTA.

*tenancy agreement* has the same meaning as in the RTA.

59B Application

This Division applies to land (*leased land*) covered by a lease granted under section 31.

59C Effect of laws relating to residential tenancies

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.

Note: The Commonwealth Minister may declare that the RTA or the Tenancy Act, or specified provisions of the RTA or the Tenancy Act, apply to tenancy agreements: see section 59E.
59D Effect of tenancy agreements

(1) The Commonwealth is not subject to any of the following obligations arising under a tenancy agreement to which the Commonwealth is a party in respect of premises on leased land:
   (a) obligations relating to the condition of the premises (or of any ancillary property);
   (b) obligations relating to the repair or maintenance of the premises (or of any ancillary property).

(2) Subsection (1) does not apply to tenancy agreements in respect of premises on leased land entered into after the beginning of the term of the relevant lease under section 31.

59E Minister may declare that the RTA or the Tenancy Act applies

The Minister may, by legislative instrument, declare that all of, or specified provisions of, the RTA or the Tenancy Act apply to tenancy agreements to which the Commonwealth is a party in respect of premises on specified leased land.
Schedule 3—Defence Housing Australia

Defence Housing Australia Act 1987

1 Subsection 3(1)

Insert:

Agency has the same meaning as in the Financial Management and Accountability Act 1997.

2 Subsection 5(1)

Omit “for, and”, substitute “for, or”.

3 Subsection 6(1)

Omit “for, and”, substitute “for, or”.

Note: The following heading to subsection 6(1) is inserted “First additional function”.

4 Paragraphs 6(1)(a) and (b)

Omit “(within the meaning of the Financial Management and Accountability Act 1997) other than the Department,”, substitute “(other than the Department)”.

5 After subsection 6(1)

Insert:

Second additional function

(1A) The second additional function of DHA is to assist an Agency (other than the Department) in relation to the delivery of a program that involves the provision of housing, or housing-related services, to persons.

6 Subsection 6(2)

Omit “second”, substitute “third”.

Note: The following heading to subsection 6(2) is inserted “Third additional function”.

7 Subsection 6(2)

Omit “subsection (1)”, substitute “subsections (1) and (1A)”.

8 Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007 No. , 2007
8 Subsection 6(2)
Omit “(within the meaning of the Financial Management and Accountability Act 1997)”.

9 Subsection 6(3)
After “subsection (1)”, insert “, (1A)”.
Note: The following heading to subsection 6(3) is inserted “Matters affecting the performance of the additional functions”.

10 After paragraph 6(4)(b)
Insert:
  (ba) the Agencies to which services can be provided;
  (bb) the programs in relation to which services can be provided;

11 Paragraphs 6(6)(a) and (b)
After “subsection (1)”, insert “or (1A)”.
Schedule 4—Land rights

Aboriginal Land Rights (Northern Territory) Act 1976

1 Section 20E
Repeal the section, substitute:

20E Appointment to be full-time or part-time
The Executive Director may be appointed on a full-time basis or on a part-time basis.

2 Section 20H
Repeal the section, substitute:

20H Restrictions on outside employment

Full-time Executive Director
(1) If the Executive Director is appointed on a full-time basis, he or she must not engage in paid employment outside the duties of his or her office without the Minister’s approval.

Part-time Executive Director
(2) If the Executive Director is appointed on a part-time basis, he or she must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

3 Section 20K
Repeal the section, substitute:

20K Leave of absence

Full-time Executive Director
(1) If the Executive Director is appointed on a full-time basis:
(a) he or she has the recreation leave entitlements that are determined by the Remuneration Tribunal; and
(b) the Minister may grant the Executive Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

**Part-time Executive Director**

(2) If the Executive Director is appointed on a part-time basis, the Minister may grant leave of absence to the Executive Director on the terms and conditions that the Minister determines.

### 4 Section 20M

Repeal the section, substitute:

**20M Termination of appointment**

(1) The Governor-General may terminate the appointment of the Executive Director for misbehaviour or physical or mental incapacity.

(2) The Governor-General must terminate the appointment of the Executive Director if:

- **(a)** the Executive Director:
  - (i) becomes bankrupt; or
  - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with his or her creditors; or
  - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

- **(b)** the Executive Director is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

- **(c)** the Executive Director is appointed on a full-time basis and engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or

- **(d)** the Executive Director is appointed on a part-time basis and engages in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office; or

- **(e)** the Executive Director fails, without reasonable excuse, to comply with section 20N.
5 Subsection 20Y(1)
Repeal the subsection, substitute:

(1) If a person has the statutory rights under section 20W or 20X:
   (a) if the person is the Commonwealth—the Minister may, on behalf of the Commonwealth, permit, in writing, a person or persons to exercise some or all of the statutory rights in relation to the whole or a part of the construction area; or
   (b) in any other case—the person may permit, in writing, a person or persons to exercise some or all of the statutory rights in relation to the whole or a part of the construction area.

6 Section 20ZA
Repeal the section, substitute:

20ZA Variation of initial area

If a person has the statutory rights under section 20W or 20X:
   (a) if the person is the Commonwealth—the Minister, on behalf of the Commonwealth, and the Land Council concerned may agree in writing to vary the initial area in a specified way; or
   (b) in any other case—the person and the Land Council concerned may agree in writing to vary the initial area in a specified way.

7 Subsection 20ZE(1)
Repeal the subsection, substitute:

(1) If a person has the statutory rights under section 20W or 20X:
   (a) if the person is the Commonwealth—the Minister may, on behalf of the Commonwealth, by writing, determine that the buildings or infrastructure is no longer required by the Commonwealth; or
   (b) in any other case—the person may, by writing, determine that the buildings or infrastructure is no longer required by the person.

8 Subsection 20ZJ(1)
Repeal the subsection, substitute:
(1) If a person has the statutory rights under section 20ZH or 20ZI:
   (a) if the person is the Commonwealth—the Minister may, on behalf of the Commonwealth, permit, in writing, a person or persons to exercise some or all of the statutory rights in relation to the whole or a part of the construction area; or
   (b) in any other case—the person may permit, in writing, a person or persons to exercise some or all of the statutory rights in relation to the whole or a part of the construction area.

9 Section 20ZL

Repeal the section, substitute:

20ZL Variation of initial area

If a person has the statutory rights under section 20ZH or 20ZI:
   (a) if the person is the Commonwealth—the Minister, on behalf of the Commonwealth, and the Land Council concerned may agree in writing to vary the initial area in a specified way; or
   (b) in any other case—the person and the Land Council concerned may agree in writing to vary the initial area in a specified way.

10 Subsection 20ZP(1)

Repeal the subsection, substitute:

(1) If a person has the statutory rights under section 20ZH or 20ZI:
   (a) if the person is the Commonwealth—the Minister may, on behalf of the Commonwealth, by writing, determine that the buildings or infrastructure is no longer required by the Commonwealth; or
   (b) in any other case—the person may, by writing, determine that the buildings or infrastructure is no longer required by the person.

11 At the end of paragraphs 23(1)(a), (b), (ba), (c), (d), (e), (ea), (f) and (fa)

Add “and”.

12 After paragraph 23(1)(fa)
Schedule 4  Land rights

Insert:

(fb) if a lease of land in the area of the Land Council is or has been granted under section 31 of the *Northern Territory National Emergency Response Act 2007* by a Land Trust—to represent the Land Trust in relation to negotiations to agree on an amount to be paid to the Land Trust under subsection 62(1G) of that Act in relation to that grant; and

(fc) if a lease of land in the area of the Land Council is or has been granted under section 31 of the *Northern Territory National Emergency Response Act 2007* by the relevant owner of the land (within the meaning of paragraph (b) or (f) of the definition of *relevant owner* in section 3 of that Act)—to represent that relevant owner, if requested to do so, in relation to negotiations to agree on an amount to be paid to that relevant owner under subsection 62(1G) of that Act in relation to that grant; and

(fd) if a lease of land in the area of the Land Council is or has been suspended under section 40 of the *Northern Territory National Emergency Response Act 2007*—to represent the holder of the lease, if requested to do so, in relation to negotiations to agree on an amount to be paid to that holder under subsection 62(1G) of that Act in relation to that suspension; and

13 At the end of subsection 23(1)

Add:

; and (i) such other functions as are prescribed by the regulations.

14 After section 33A

Insert:

33B Land Council may charge other fees

(1) A Land Council may charge the Commonwealth a fee for the reasonable expenses incurred by the Council in performing functions referred to in paragraph 23(1)(fb), (fc) or (fd).

(2) A Land Council may charge the Commonwealth a fee for the reasonable expenses incurred by the Council in providing services prescribed by the regulations for the purposes of this subsection.
(3) The fee must not be such as to amount to taxation.

(4) Nothing in this section prevents a Land Council charging the Commonwealth a fee under section 33A.

15 Paragraph 34(1A)(a)

After “33A”, insert “or 33B”.

16 Subsection 34(4) (after paragraph (a) of the definition of administrative costs)

Insert:

(aa) expenses for which the Council may charge a fee under section 33B; and

17 Paragraph 35(1)(b)

After “33A”, insert “or 33B”.

18 Subsection 35(4)

Omit “or under a lease or licence under section 19 or 20 but not including a payment under section 64”, substitute “, under a lease or licence under section 19 or 20 or in accordance with section 60 or 62 of the Northern Territory National Emergency Response Act 2007 but not including a payment under section 33A, 33B or 64 of this Act”.

19 At the end of subsection 37(2)

Add:

; and (c) the total fees the Council received under section 33B during that year.

20 Subsection 70F(2)

After “section 19”, insert “(other than a lease granted to the Director)”.

21 After section 70H

Insert:

70J No limit on the Environment Protection and Biodiversity Conservation Act 1999

Nothing in sections 70B to 70G limits the regulation, under the Environment Protection and Biodiversity Conservation Act 1999 or
regulations under that Act, of activities carried out in relation to land leased to the Director.

22 After subsection 76(1)

Insert:

(1A) The Minister may, in writing, delegate any of the Minister’s functions or powers under Part IIB to:

(a) the Secretary of the Department; or

(b) an SES employee or acting SES employee in the Department; or

(c) the Secretary of any other Department of the Commonwealth; or

(d) an SES employee or acting SES employee in any other Department of the Commonwealth; or

(e) the General Manager of Indigenous Business Australia appointed under section 168 of the *Aboriginal and Torres Strait Islander Act 2005*.

23 Subsection 52(8)

Repeal the subsection.

24 At the end of subsection 63(1)

Add:

; (f) an amount that is payable by the Commonwealth under section 33B of the *Aboriginal Land Rights (Northern Territory) Act 1976*. 

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16 *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007* No., 2007
Schedule 5—Acquisition of rights, titles and interests in land

Northern Territory National Emergency Response Act 2007

1 Subsection 35(2)
Omit “section 62”, substitute “subsection 62(5)”.

2 Subsections 38(1) and (2)
Repeal the subsections, substitute:

(1) The following have effect despite section 67A of the Aboriginal Land Rights (Northern Territory) Act 1976 (which is about land subject to traditional land claims):
   (a) the grant to the Commonwealth, under section 31 of this Act, of the lease of Canteen Creek (as described in clause 65 of Schedule 1 to this Act);
   (b) the grant by the Commonwealth, under subsection 35(5) of this Act, of any estate or interest in Canteen Creek (as so described).

(2) Except as set out in this section, the grant of a lease of land, or an estate or interest in land, referred to in paragraph (1)(a) or (b) does not affect any application, made under paragraph 50(1)(a) of the Aboriginal Land Rights (Northern Territory) Act 1976 in relation to that land, that has not been finally disposed of immediately before the lease, or the grant of the estate or interest, takes effect.

3 Subsection 38(3)
After “lease”, insert “referred to in paragraph (1)(a)”.

4 Subsection 47(2)
Omit “land has been resumed or forfeited”, substitute “land has been resumed, or a lease in respect of that land has been forfeited,”.

5 Paragraph 51(1)(c)
Omit “on land” (wherever occurring), substitute “on or in relation to land”.

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007 No. , 2007 17
6 **Paragraph 51(1)(d)**
Omit “on land”, substitute “on or in relation to land”.

7 **At the end of subsection 52(1)**
Add:

> Note: The Land Trust for land covered by a lease granted under section 31 may also grant, in respect of the land, an interest of a kind prescribed by the regulations (see subsection (4A)).

8 **After subsection 52(4)**
Insert:

> Grants of interests by a Land Trust under section 19 if prescribed by regulations

> (4A) Despite the grant of a lease of Aboriginal land under section 31, the Land Trust for the land may, in accordance with section 19 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, grant an interest (including a licence but not including a lease) of a kind prescribed by the regulations for the purposes of this section.

9 **Subsection 52(5)**
Repeal the subsection, substitute:

> No other dealings authorised

> (5) To avoid doubt, subsections (1) and (4A) do not authorise a Land Trust to deal with an estate or interest in land covered by a lease granted under section 31, other than by granting a lease or an interest as referred to in those subsections.

10 **Paragraphs 53(1)(c), 54(1)(c), 58(1)(c) and 59(1)(c)**
Omit “land resumed or forfeited”, substitute “land that has been resumed, or land in respect of which a lease has been forfeited,”.

11 **Paragraph 61(a)**
Omit “section 62”, substitute “subsection 62(5)”.

12 **Before subsection 62(1)**
Insert:

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*Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007 No. 8, 2007*
Agreement on amounts in respect of leases granted under section 31

(1A) The Commonwealth Minister and the relevant owner (the *other party*) (not being the Northern Territory) of land that is covered by a lease granted under section 31 may agree in writing on an amount to be paid by the Commonwealth to the other party.

(1B) The payment of the amount agreed under subsection (1A) may be made as a one-off payment, or a periodic payment while the lease is in force, as agreed by the Commonwealth Minister and the other party.

(1C) Before the Commonwealth Minister and the other party agree on an amount under subsection (1A), the Commonwealth Minister may request the Valuer-General (appointed under section 5 of the *Valuation of Land Act* of the Northern Territory) to determine an indicative amount for the purposes of subsection (1A).

Agreement on amounts in respect of lease terminated under paragraph 37(1)(b)

(1D) The Commonwealth Minister and the person (the *other party*) who held a lease of land that is terminated under paragraph 37(1)(b) may agree in writing on an amount to be paid as a one-off payment by the Commonwealth to the other party.

Agreement on amounts in respect of leases suspended under section 40

(1E) The Commonwealth Minister and the person (the *other party*) who holds a lease of land that is suspended under section 40 may agree in writing on an amount to be paid by the Commonwealth to the other party.

(1F) The payment of the amount agreed under subsection (1E) may be made as a one-off payment, or a periodic payment while the lease is suspended, as agreed by the Commonwealth Minister and the other party.

General provisions relating to payment of agreed amounts

(1G) The Commonwealth must pay the other party the amount agreed under subsection (1A), (1D) or (1E).
(1H) If the other party is not represented by a Land Council (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*) in relation to negotiations to agree on an amount under subsection (1A), (1D) or (1E), the Commonwealth must pay the reasonable expenses incurred in representing the other party in relation to the negotiations.

Note 1: The heading to section 62 is altered by omitting “rent” and substituting “agreed amounts or rent etc.”.

Note 2: The following heading to subsection 62(1) is inserted “Payment of rent”.

13 **Subsection 62(2)**

After “Commonwealth Minister”, insert “under subsection (1C) or (1)”.

Note: The following heading to subsection 62(2) is inserted “General provisions relating to requests for valuation”.

14 **Subsection 62(3)**

Omit “under this section”, substitute “under subsection (1C) or (1)”.

15 **Subsection 62(4)**

Omit “subsection (1)”, substitute “subsection (1C) or (1)”.

16 **Subsection 62(5)**

After “Valuer-General”, insert “under subsection (1)”.

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20 *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007 No. , 2007*
Schedule 6—Community stores

Northern Territory National Emergency Response Act 2007

1 Paragraph 92(2)(b)
After “roadhouse”, insert “, unless an Indigenous community is substantially dependent upon the roadhouse for the provision of grocery items and drinks”.

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2007 No. , 2007 21