

# NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE ACT 2007 (CTH)

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Act No 129, 2007

Assented to 17 August 2007

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The *Northern Territory National Emergency Response Act (Cth) 2007* ('the Act'), introduced as part of the Northern Territory Emergency Response, deals with:

- compulsory acquisition of leases over communities;
- town camps;
- alcohol restrictions;
- publicly funded computers;
- licensing of community stores;
- business management areas; and
- bail and sentencing.

## **Compulsory acquisition of leases over communities**

Under Part IV of the Act, the Commonwealth compulsorily acquires leases over 65 Aboriginal communities for a term ending 5 years after commencement of the Act. In addition to the 65 identified communities, further leases over any Aboriginal land or Aboriginal community living area may be acquired by regulation.

The acquired interest is described in the Act as a lease, however all terms and conditions are determined by the Commonwealth in accordance with the Act and notified to the land owner. There are no rights noted in favour of the landowner or community residents. The acquired interest includes the right to repair, fit out or demolish buildings, grant sub-tenures or exclude any person from the acquired area.

The boundaries of the acquired areas are set out in the schedule to the Act. The described areas extend beyond immediate community infrastructure to include surrounding land for up to several kilometres, and in some instances separate blocks are created to include airstrips, borefields, cattle yards, nearby outstations and other infrastructure.

Registered leases are initially excluded from the acquired areas. Other rights or interests such as unregistered leases (but excluding native title) are preserved on the same terms as if those rights or interests were instead granted by the Commonwealth (for the duration of the 5 year term). However, the Commonwealth may at any time terminate such a registered lease or preserved right or interest.

## **Compulsory acquisition of town camps**

The Act modifies the *Special Purposes Leases Act (NT)* and the *Crown Land Act (NT)* to give the Commonwealth the same authority to administer, forfeit for breach and resume town camp leases as the Northern Territory. The circumstances under which a lease may be resumed are not changed, except that the period of notice required under each Act is reduced from 6 months to 60 days. Where the Commonwealth exercises these powers it does so on behalf of the Territory.

In addition, the Act also creates a new right in the Commonwealth to vest all rights, titles and interests in town camp land in the Commonwealth through notice alone. This second power is distinct from the first in that no grounds of forfeiture are required and the power is exercised on behalf of the Commonwealth itself, not the Territory.

These new powers relate to five identified town camps in Darwin, two in Katherine, nine in Tennant Creek, 17 in Alice Springs, and 'any land in the Northern Territory' prescribed by the regulations for this purpose. At the time of writing, these powers have not been exercised.

## **Native title, compensation and Northern Territory laws**

The application of the future act provisions of the *Native Title*

*Act 1993* (Cth) is excluded in relation to both the acquisition of communities and town camps.

The obligation of the Commonwealth to pay just terms compensation for the compulsory acquisition of property in the Northern Territory is regarded as uncertain and the Act aligns itself with this uncertainty. While the *Northern Territory (Self Government) Act 1978* (Cth) usually provides that an acquisition in the Northern Territory must be on just terms where a similar acquisition in a State would require just terms under paragraph 51(xxxi) of the *Constitution*, the Act excludes these provisions with respect to the acquisition of communities and town camps.

Where the Commonwealth is nevertheless required to pay compensation, the Act provides for a 'reasonable amount of compensation' taking into account any rent that is paid (the Commonwealth may, but is not required to, pay rent) and any improvements on the land which were funded by the Commonwealth (whether made before or after the acquisition).

On acquired communities and town camps, regulations made under the Act may modify laws of the Northern Territory with respect to planning, infrastructure, subdivision and transfer of land, local government and other prescribed matters.

### Prescribed areas

The alcohol, publicly funded computers and community store provisions of the Act predominantly relate to 'prescribed areas', which is defined in the Act as:

- Aboriginal land, including roads and rivers on Aboriginal land;
- Aboriginal community living areas;
- town camps as declared by the Minister; and
- other areas declared by the Minister.

Aboriginal land refers to land that has been returned to traditional Aboriginal owners under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). This is sometimes described as enhanced freehold. Around half of the Northern Territory is Aboriginal land, the majority being located in the western half of central Australia and in Arnhem land. The majority of remote communities are on Aboriginal land.

Aboriginal community living areas are smaller areas of Northern Territory freehold granted for use as living areas, predominantly within a pastoral lease, and includes both small outstations and some larger communities. The Act refers to Aboriginal community living areas granted under section 46(1A) of the *Lands Acquisition Act* (NT); a subsequent declaration of the Minister includes any other Aboriginal community living areas, however granted, as prescribed areas.

The Minister has declared 47 town camps from across the Territory as prescribed areas.

### Leased Aboriginal land

Aboriginal land which has been leased (this includes some national parks) is still a prescribed area unless declared otherwise. In response to concerns from the tourism industry, the Minister has declared that the car and bus sunset viewing areas at Uluru are not prescribed areas, meaning none of the prescribed area provisions will apply. The Minister has also declared that the alcohol provisions do not apply to five campgrounds in Kakadu and one at Nitmiluk, though these campgrounds remain 'prescribed areas' for other purposes.

### Alcohol

Alcohol in prescribed areas is prohibited by effect of Part II of the Act, which provides that each prescribed area is a 'general restricted area' for the purposes of the *Liquor Act* (NT). It is an offence to bring liquor into, possess liquor within, or consume, sell or otherwise dispose of liquor in a general restricted area.

Around 100 general restricted areas were already in existence under the *Liquor Act* (NT), all relating to Aboriginal communities or land and created upon community application. The main effect of the Act is to include all the Aboriginal land surrounding those communities (including outstations) and to add a number of town camps which were not previously general restricted areas.

The Act also creates a new set of offences which replace the operation of the *Liquor Act* offences. All the previously declared general restricted areas now within prescribed areas will be subject to the new penalty provisions.

### **Further alcohol provisions**

In addition to the new laws concerning prescribed areas, the Act also makes new laws in relation to all takeaway liquor sales in the Northern Territory. Where a customer in a single transaction purchases \$100 or more worth of liquor, or purchases one wine cask of more than five litres or two wine casks of at least two litres, then the licensee must view the customer's proof of identity and record his or her name, address and the intended destination of the liquor. These records must be made available to an inspector upon request.

### **Publicly funded computers**

A 'publicly funded computer' is a computer located in a prescribed area which is owned or leased by, or on loan from, a person or organisation who receives some form of government funding. The computer itself does not have to be publicly funded.

The Act requires the person responsible for a publicly funded computer to install and maintain a filter accredited by the Telecommunications Minister. The person responsible must also ensure that a record is kept for three years of each person who uses the computer and when they use it, and that an acceptable use policy is developed and made known to each person who uses the computer. Each publicly funded computer must be audited on 31 May and 30 November each year and a report of the audit provided to the Australian Crime Commission. A failure to comply with any of these provisions is an offence of strict liability.

### **Licensing of community stores**

The community store licensing scheme supports the operation of the income management regime under the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

The Act introduces a community store licensing scheme for grocery stores that operate in a prescribed area. The scheme applies to 'community stores', whose main purposes include the provision of groceries and drinks, but does not apply to businesses that are solely takeaway food shops or roadhouses. The Minister can, by legislative instrument, extend the scheme to other grocery stores in the Northern Territory outside of a prescribed area.

The Commonwealth may elect to require a community store to be assessed for a licence, or a person may apply for a community store licence. In assessing a store, the authorised officer will have regard to the capacity of the store to participate in income management, the quality and quantity of merchandise and the financial structure, retail practices and governance practices of the store.

Where a licence is granted, it is subject to conditions in relation to satisfactory performance, monitoring and audits, transfers and other matters.

Income management has commenced at Titjikala, Finke, Imanpa and Mutitjulu and each of the community stores in those communities has been licensed. Where a licence is not granted, or where a licence is revoked, the Commonwealth may by declaration acquire all of the assets and liabilities of a community store. At the time of writing this provision has not been used.

### **Business management areas**

Each of the 65 communities which are subject to the compulsory acquisition provisions, together with a further seven communities which for different reasons are not acquired (such as Mutitjulu, which is on land already leased to the Director of National Parks), are described in the Act as 'business management areas'. The Minister may also declare any area of land situated wholly within the Northern Territory to be a business management area.

The Act gives the Minister broad powers to direct the activities of certain organisations and individuals providing services in business management areas. Those affected are called 'community service entities', which is defined as a local government council, incorporated association or Aboriginal corporation. The Minister may additionally specify any person or entity that performs functions or provides services in a business management area to be a community service entity.

This definition will initially capture, in addition to community councils, most community-based health, aged care and social service providers, media organisations, arts centres and community stores (depending on their corporate structure), though it can potentially capture any organisation operating in a community. It is not a requirement that the entity is Government-funded, though most business management powers relate to Government funding.

The business management powers allow the Commonwealth to do the following:

- Vary, by notice, the terms of a funding agreement (whether entered into before or after the commencement of the Act) that includes the provision of services in a business management area.
- Direct community service entities to provide specified services where the Minister is satisfied that a community service entity has sufficient Commonwealth or Territory funding available to it (whether or not related to the service).
- Direct community service entities to use assets in a particular way or transfer ownership or possession of the asset(s) to the Commonwealth or another person where the Minister is satisfied that the asset is required to provide a service and that the entity or another person has funding that could be used to provide that service.
- Appoint one or more persons to observe community service entities where such an entity performs functions in any business management area. Commonwealth observers are entitled to attend meetings (whether or not in, or about, the business management area) and have all the rights and obligations of a member of the entity other than voting rights. Upon notification of the appointment of an observer, the entity is required to give the observer notice of meetings together with any background documents and minutes.

Failure to comply with these provisions is an offence and may be grounds for an injunction application in the Federal Court.

### **Bail and sentencing**

The Act provides that a court (or bail authority) must not, when sentencing or considering bail applications for any offence in the Northern Territory, take into consideration any form of customary law or cultural practice as a reason for excusing, justifying or lessening the seriousness of the (alleged) behaviour, or as reason for aggravating the seriousness of the (alleged) behaviour.

The Act further states that in a bail application the bail authority must take into consideration the potential impact of granting bail on any victim, witness or potential witness. Where the victim, witness or potential witness lives in a

remove community the bail authority must take note of this when considering the potential impact.

### **Suspension of the operation of the *Racial Discrimination Act 1975* (Cth)**

The *Racial Discrimination Act 1975* (Cth) ('*RDA*') provides that discrimination is not prohibited where it is a 'special measure', defined with reference to the 1965 *International Convention on the Elimination of all Forms of Racial Discrimination*. The question of whether a particular action is a special measure ultimately falls to be determined through the complaints process. There is an existing body of case law around what constitutes a special measure.

The Commonwealth accepts that certain aspects of the Emergency Response are discriminatory, but asserts that every action pursuant to the Emergency Response should be regarded as a special measure. If this is the case the actions would not be prohibited discrimination under the *RDA*. While this would normally fall to be determined according to law in each case, the Act instead provides that the *RDA* will not apply to it or to actions taken pursuant to it. Any laws of the Northern Territory that deal with discrimination are also excluded.

*The full text of this Act is available online at: <<http://www.austlii.edu.au>>. The Second Reading speech may be found at <<http://www.aph.gov.au/bills/index.htm>>.*