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Committee Secretary
Community Affairs Committee
Department of the Senate
PO Box 6100
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Dear Mr Humphery

**Re: Families, Housing, Community Services and Indigenous Affairs and Other Legislation (Emergency Response Consolidation) Bill 2008**

Thank you for your invitation of 25 March 2008 to make submissions to the Inquiry addressing the above-mentioned Bill. This Bill will amend the Northern Territory National Emergency Response Legislation (the NTNER legislation) that purportedly introduced measures to protect Aboriginal children in a number of ways.

I would like to make brief submission focused on only two aspects of the above Bill:

**1 The repeal of the abolition of the permit system that would have given public access to prescribed communities on Aboriginal-owned land but then introduces new Ministerial powers to authorise people to enter communities covered by the emergency response**

I attach for your Committee a copy of the submission I made to the FaCSIA Discussion Paper 'Access to Aboriginal Land under the Northern Territory Land Rights Act – Time for Change?' in late 2006 (available at: http://www.anu.edu.au/caepr/Publications/topical/Altman_Permits.pdf). I do so because even prior to the passage of the NTNER legislation I was making a case for the retention of the permit system. (I note that in its submission to this Inquiry, the Law Council of Australia reports on its analysis of all submissions to the permits review obtained via the Freedom of Information statutory process.)

To put it very succinctly, prescribed areas are held under inalienable freehold title by Aboriginal Land Trusts for Aboriginal traditional owners. This is an unusual form of land ownership because it is vested in groups rather than individuals. It is also unusual because Aboriginal prescribed townships have been built on land where the underlying title is communal inalienable freehold. This is the consequence of colonial history because government settlements and missions had been established on lands whose Aboriginal ownership was only recognised after the passage of land rights law in 1976. In some cases townships were established after 1976. In both cases the permit system allows the owners of that land to exercise their rights to exclude non-Aboriginal people from the land that they own under Australian

law. Because this is an unusual form of land tenure is explained in part why an unusual form of entry requirement, the permit system, is required. This system is administered by Aboriginal land councils or delegated authorities and gives substance to the property rights of traditional owners.

I can see no reason why these full property rights should not be restored to traditional owners; indeed it was my understanding that the incoming Rudd government had committed to fully reinstate the permit system. The current amendment in my view falls short of that commitment and is responding to spurious claims that some people like journalists have difficulty gaining access to Aboriginal communities. Given that we are entering a new phase of governance when an evidence base is required before new policy approaches are to be taken, it would be useful to have concrete examples provided of situations when certain categories of people have failed to gain access to Aboriginal communities. Until such evidence is tendered, I believe that while the new provisions (with ministerial authorisations) are far superior to those extant in the NTNER legislation, they still dilute the property rights of traditional owners and should be amended to eliminate ministerial authorisations. There are still powerful forces in Australian society that are looking to abolish the permit system (see e.g. Tony Abbott 'Caring involves sharing', *The Australian*, 25 March 2008) and suggest a link between permits and child sex abuse. Such views are not based on cogent argument, lack facts and show a complete disregard for Aboriginal property rights. There is a danger that any incomplete reinstatement of the permit system on Aboriginal-owned land will inadvertently reinforce such ill-conceived views. To summarise, Aboriginal owned freehold land should be treated no different from non-Aboriginal owned freehold. The land tenure system might be different, but the principles of equal treatment should be the same.

**2 Provisions that allow roadhouses, upon which communities are substantially dependent, to be subject to the community store licensing regime.**

This issue has clearly arisen because some remote prescribed Aboriginal communities do not have community stores. Consequently, while the incomes of members of these communities can be unilaterally quarantined by Centrelink as allowed under the NTNER legislation, there may be no licenced stores where people can shop. While I am not in favour of the blanket introduction of income management I can appreciate that roadhouses sometimes perform the function of a community store. In my view, whether a community is substantially dependent upon a community store, or not, should not be the criterion for deciding whether a roadhouse may be licenced as a community store.

I make this point for the following reason. In 2002, I led a research team that undertook research for the Australian Competition and Consumer Commission (ACCC) titled *Competition and Consumer Issues for Indigenous Australians* that focused in part on Indigenous community stores in the 'frontier economy'. This report (available at: http://www.accc.gov.au/content/index.phtml/itemId/304516) highlighted that competitive markets were often missing in remote Aboriginal communities and conversely that competition is good for Indigenous consumers just as it is for non-Indigenous consumers. Consequently, if licencing a roadhouse increases competition in a region this should be encouraged irrespective of the substantial (or any other) dependence of a community on that store. The crucial issue surely is that licencing requires stores, however defined, to meet certain minimum requirements. There has been some suggestion that the cost of attaining licencing accreditation is being passed onto welfare dependent consumers; such price increases would be especially acute in monopoly situations and would be especially acute for those with quarantined incomes who would find it difficult to shop elsewhere (unlike people with 'unregulated' incomes). It is also far from clear how 'substantial dependence' will be assessed. Consequently it is recommended para 92(2)(b) of the NTNER Act 2007 is amended to allow roadhouses to be licenced stores as long as they meet licencing requirements.

I am providing this submission as background to verbal evidence that I will be providing the Committee by teleconference at 1.30 pm on Tuesday 29 April 2008.

Yours sincerely

Professor Jon Altman

22 April 2008.

Attachment: Submission on FaCSIA Discussion Paper