

Senate Legal and Constitutional Affairs Committee

QUESTIONS ON NOTICE

FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS PORTFOLIO

Northern Territory National Emergency Response Bill 2007 and Related Bills

10 August 2007

Topic: Compensation

Question No: 2

Hansard Page: Written

Senator Ludwig asked:

Just in terms of compensation provisions can you provide an explanation of how it will work in practice?

Answer:

The acquisition of property under the Constitution must be on just terms and the bills cannot remove or diminish that compensation. The NTNER Bill and the FCSIA and Other Legislation Amendment (NTNER and Other Measures) Bill contain compensation provisions to ensure that the correct amount of compensation payable under the Constitution is paid. This is achieved by provisions which make it clear that, if any property is acquired other than on just terms, the Australian Government is legally liable to pay a reasonable amount of compensation. If the person and the Australian Government cannot agree on what is a reasonable amount of compensation then the courts can determine the amount. The requirement for 'reasonable compensation' is a standard drafting term for fulfilling the requirement to pay 'just terms' for the acquisition of property under the Constitution.

In practice, persons or organisations who consider that compensation is payable will make a claim or have discussions leading to a claim. The Australian Government will assess the claim and, if compensation is payable under the Constitution, negotiate with the claimant to reach an agreement and pay the compensation

However, if agreement cannot be reached, the bills give the claimant the right to go to the courts and for the courts to determine the amount of compensation to be paid. When a court is determining the amount of compensation, in relation to the 5 year leases, the NTNER Bill requires the courts to have regard to any rent paid or payable and any improvements made to the land by the Australian Government.