



Parliament of Australia

Senate

Legal and Constitutional Affairs Committee

Inquiry into the provisions of the Northern Territory Emergency Response Bill 2007
and associated bills

Northern Land Council Submission

10 August 2007

NORTHERN TERRITORY EMERGENCY RESPONSE BILL 2007 AND OTHER BILLS

The Northern Land Council (NLC) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee regarding its enquiry into the provisions of the Northern Territory Emergency Response Bill 2007 and associated bills.

The NLC's submission is necessarily brief, given the short time available for its preparation.

For over 30 years both the Commonwealth and the Northern Territory governments have discriminated against Aboriginal people by failing to provide basic services to Aboriginal communities, including in relation to education, health, housing, police and local government.

The result has been serious community dysfunction, including unemployment, low life expectancy, violence and other crime.

This outcome is the responsibility of governments, and was caused by government neglect. It was not caused by the *Land Rights Act*, native title or the permit system.

In these circumstances the Commonwealth government's decision to proactively intervene to establish acceptable socio-economic conditions and outcomes in Aboriginal communities must be welcomed.

It is deeply disappointing, however, and appears discriminatory, that the Commonwealth government has chosen to intervene without any consultation with communities, without good faith negotiations and informed consent, and by compulsion.

The Environment Minister, Malcolm Turnbull, recently emphasised that the Commonwealth government would not interfere with privately owned water rights regarding the Murray/Darling river basin. No basis exists for taking a different approach regarding Aboriginal owned property, especially given that many communities include housing and other infrastructure which has been privately funded (eg much infrastructure in Palumpa derives from wealth generated by an Aboriginal owned cattle and abattoir enterprise).

Failure to carefully audit each community and its infrastructure prior to compulsory acquisition will inevitably lead to arbitrary and discriminatory results, whereby private property and private enterprise are unfairly extinguished.

On 28 June 2007 the NLC wrote to the Prime Minister and emphasised that, properly consulted, traditional owners of many communities may well consent to the involvement of the Commonwealth government (through five year leases), instead of the Northern Territory government, in the administration of their communities.

In return traditional owners, for the first time in the history of the *Land Rights Act*, would receive compensation on just terms for the use of their country for communities - as well as the ongoing benefits of improved socio-economic outcomes.

The NLC understands that it will be six months before compulsory acquisition of leases occurs for communities in its region, because Commonwealth programmes are not ready. Plainly there is sufficient time to conduct and complete consultations for the consensual grant of five year leases. The NLC's experience in successfully and promptly conducting consultations for complex or

controversial projects, such as the railway, mining or the Commonwealth radioactive waste facility, confirms this view.

It is deeply disappointing that no response has been received from the Prime Minister, or Indigenous Affairs Minister, to the NLC's letter dated 28 June 2007.

Nonetheless the NLC urges the Commonwealth government to reconsider and provide the option for traditional owners and communities to proceed by means of the consensual grant of five year leases - instead of compulsory acquisition.

This course would go a long way to resolving many of the concerns raised regarding racial discrimination and the subversion of the democratic process, particularly by the Human Rights and Equal Opportunity Commission and the Law Council of Australia.

The alternative course, chosen by the Commonwealth government, will inevitably lead to High Court legal action, international complaint, and universal opposition.

It is noted that the High Court is presently considering legal issues in relation to the compulsory acquisition of native title by the Northern Territory Government in Timber Creek.

In relation to the permit system the NLC conducted comprehensive consultations with all communities in its region in late 2006 and earlier this year. Traditional owners, and Aboriginal people in communities, universally opposed removal of the permit system, as does the NLC.

For the reasons stated by the Law Council of Australia the NLC considers that the Commonwealth legislative restrictions regarding consideration of cultural matters in relation to bail and sentencing are discriminatory.