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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND
OTHER LEGISLATION AMENDMENT (NORTHERN TERRITORY
NATIONAL EMERGENCY RESPONSE AND OTHER MEASURES)
BILL 2007**

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
the Hon Mal Brough MP)**

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OUTLINE

This bill will provide for the Australian Government's response to the national emergency confronting the welfare of Aboriginal children in the Northern Territory, and other measures, by amending existing Commonwealth legislation.

Prohibited material

The bill inserts a new Part 10 into the *Classification (Publications, Films and Computer Games) Act 1995*, containing measures banning the possession of pornographic material within prescribed areas and prohibiting the supply of pornographic material in prescribed areas. The new Part also gives police all necessary powers in prescribed areas to seize and destroy material which may be prohibited under the new Part 10.

Law enforcement

The bill amends Commonwealth law enforcement legislation to facilitate implementation of the Government's emergency measures to protect Aboriginal children in the Northern Territory from harm.

Infrastructure

The bill ensures that the Commonwealth, Commonwealth authorities, the Northern Territory and Northern Territory authorities can retain an interest in buildings and infrastructure constructed or upgraded on Aboriginal land in the future where they fund the construction or major upgrade. This will ensure that, in the future, government investment on Aboriginal land will be protected. The Schedule specifies: the circumstances in which government will have statutory rights over buildings and infrastructure; the content of the statutory rights; the power to deal with statutory rights; and the obligation to negotiate in good faith for a lease. The Schedule also provides a mechanism for the statutory rights to come to an end once the buildings and infrastructure are no longer required.

Access to Aboriginal land

The bill makes changes to the provisions governing access to Aboriginal land to increase interaction with the wider community and promote economic activity. It removes the requirement for people to obtain permits to enter and remain on certain areas of Aboriginal land, including common areas of townships, road corridors, airstrips and boat landings. It also allows for the placement of temporary restrictions on access to these areas to protect the privacy of cultural events or public health and safety. The Schedule allows government officials and members of Parliament to enter and remain on Aboriginal land when performing relevant duties and for people to attend court hearings on Aboriginal land.

Miscellaneous

The bill makes several minor amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act). The amendments relate to township leases granted under section 19A, land leased under section 31 of what will become the *Northern Territory National Emergency Response Act 2007* and the definition of estates and interests in sections 70 and 71 of the Land Rights Act.

Financial impact statement

Total resourcing for the measures in the bill for 2007-08 is \$4.9 m.

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NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007*.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Act. Generally, commencement is the day after Royal Assent.

Clauses 3, 4 and 5 make special provision for the provisions of this Act in relation to certain discrimination and other laws. Notably, **clause 4** ensures that the provisions of this Act are deemed to be special measures and are also excluded from the operation of Part II of the *Racial Discrimination Act 1975*.

Subclause 4(1) provides that, for the purposes of the *Racial Discrimination Act 1975*, the provisions of this Act are deemed to be special measures. Article 1.4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that: 'Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.'

Subclause 4(2) provides that the provisions of this Act are excluded from the operation of Part II of the *Racial Discrimination Act 1975*. Part II of the *Racial Discrimination Act 1975* includes sub-sections 9(1), 9(1A) and section 10. **Subclause 4(2)** overlaps with **subclause 4(1)**.

The Northern Territory national emergency response announced by the government recognises the importance of prompt and comprehensive action, as well as Australia's obligations under international law. The Convention on the Rights of the Child requires Australia to protect children from abuse and exploitation and ensure their survival and development and that they benefit from social security. The International Convention for the Elimination of All Forms of Racial Discrimination requires Australia to ensure that people of all races are protected from discrimination and equally enjoy their human rights and fundamental freedoms.

Preventing discrimination and ensuring equal treatment does not mean treating all people the same. Different treatment based on reasonable and objective criteria and directed towards achieving a purpose legitimate under international human rights law is not race discrimination. In fact, the right not to be discriminated against is violated when governments, without objective and reasonable justification, fail to treat differently people whose situations are significantly different.

The impact of sexual abuse on Indigenous children, families and communities is a most serious issue, requiring decisive and prompt action. The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties. In doing so, it will take important steps to advance the human rights of the Indigenous peoples in communities suffering the crisis of community dysfunction.

In the case of Indigenous people in the Northern Territory, there are significant social and economic barriers to the enjoyment of their rights to health, development, education, property, social security and culture.

The emergency measures in the bill are part of the action to improve the ability of Indigenous peoples to enjoy these rights and freedoms. This cannot be achieved without implementing measures that do not apply in other parts of Australia. In a crisis such as this, the measures in the bill are necessary to ensure that there is real improvement before it is too late for many of the children. The bill will provide the foundation for rebuilding social and economic structures and give meaningful content to Indigenous rights and freedoms.

Preventing child abuse depends upon families living in stable and secure environments. Indigenous communities cannot enjoy their social and economic rights equally with non-Indigenous people, including their rights over their land, if living conditions in communities are dangerous and their children are subject to abuse.

Sustainable housing is a key element to making lasting improvements to community living arrangements. The access and infrastructure provisions in this bill are required to allow the government to address the national emergency in the Northern Territory. The government cannot build and repair buildings and infrastructure without access to the townships and security over the land and assets.

The law enforcement and prohibition on pornographic material provisions are similarly necessary to help in the establishment of normal standards in the communities.

Clause 3 provides that section 49 of the *Northern Territory (Self-Government) Act 1978* does not apply in relation to the provisions of this Act, so as to avoid any potential difficulties presented by that section in implementing the emergency response.

Clause 5 deals with any potential conflict between the provisions of this Act and Northern Territory laws on discrimination. **Subclause 5(1)** generally ensures that the provisions of this Act are excluded from the operation of any law of the Northern Territory that in any way relates to discrimination. The purpose of this provision is to ensure that none of the laws of the Northern Territory that relate to discrimination will prevent the implementation of the emergency measures in the bill.

Subclause 5(2) allows the Minister to make a legislative instrument to determine that **subclause 5(1)** does not apply to a particular law of the Northern Territory.

Clause 6 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

Abbreviations

This explanatory memorandum uses the following abbreviations:

- 'Land Rights Act' means the *Aboriginal Land Rights (Northern Territory) Act 1976*; and
- 'Legislative Instruments Act' means the *Legislative Instruments Act 2003*.

Schedule 1 – Prohibited material

Summary

This Schedule inserts a new Part 10 into the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act), which contains measures banning the possession of pornographic material within prescribed areas and prohibiting the supply of pornographic material in prescribed areas. **Prescribed areas** has the same meaning as in what will become the *Northern Territory National Emergency Response Act 2007*. The new Part also gives police all necessary powers in prescribed areas to seize and destroy material which may be prohibited under the new Part 10.

The amendments take effect on the 28th day after Royal Assent. This provides time for people within prescribed areas who possess material which was previously legal but is prohibited under the provisions of the new Part 10 to dispose of that material.

Background

As part of its emergency response to the situation in Northern Territory Indigenous communities, the government is implementing a number of measures to reduce the prevalence of pornography in prescribed areas.

The *Classification (Publications, Films and Computer Games) Act 1995* (the Commonwealth Classification Act) facilitates the operation of the national classification scheme, a cooperative arrangement between the Commonwealth, States and Territories.

The Classification Board and Classification Review Board classifies films, computer games and some publications, applying the criteria in the Commonwealth Classification Act, the National Classification Code and the classification guidelines.

For the purposes of the emergency response, **pornography** has been defined to include films that are classified X18+ and films or computer games that are classified RC ('refused classification') or are unclassified but would be likely to be classified X18+ or RC. The measures also cover publications which are classified Category 1 or Category 2 restricted or RC or are unclassified but would be likely to be classified Category 1 or Category 2 restricted or RC.

Under the national classification scheme the X18+ classification is a special and legally restricted classification for material containing real depictions of actual sexual intercourse and other sexual activity between consenting adults. Publications which contain sexually explicit content must be classified Category 1 or Category 2 restricted depending on the impact of the content. Films and publications classified X18+ and Category 1 or Category 2 restricted respectively are legally restricted to adults.

A film, computer game or publication will be classified RC where, among other things, it depicts, expresses or otherwise deals with matters of sex, cruelty, violence or revolting or abhorrent phenomena in such a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults, to the extent that it should not be classified.

Under the cooperative scheme, State and Territory governments determine what material can be sold in their jurisdictions. Law enforcement agencies in each jurisdiction are responsible for enforcing classification restrictions

The Northern Territory *Classification of Publications, Films and Computer Games Act 2005* (the Northern Territory Classification Act) provides the framework for prohibitions on dealing with pornography of different classification categories and enforcement of these prohibitions within the Northern Territory. Restrictions apply to the sale, exhibition, attendance at and copying of films and computer games which are unclassified, or classified RC or films which are classified X18+. In addition, there are restrictions on the sale or delivery of publications which are unclassified, classified RC or classified Category 1 Restricted or Category 2 Restricted. Although X18+ classified material is restricted in the Northern Territory, unlike in the States, the sale and hire of X18+ material is permitted.

The *Little Children are Sacred* report revealed that the availability of pornography in Indigenous communities is a factor that contributes to child sexual abuse in those communities, being used to groom children for sex, and normalising inappropriate sexualised and violent behaviour in children. Despite the restrictions imposed by the Northern Territory Classification Act, both X18+ classified and illegal material are readily available and are being illegally displayed to children.

As part of the implementation of the government's response to the crisis in Indigenous communities in the Northern Territory, the Commonwealth Classification Act will be amended to include prohibitions on the possession, control and supply of RC, X18+ and Category 1 or Category 2 Restricted material, as well as unclassified material likely to be classified in those categories, in prescribed areas. The amendments also provide for police powers to seize and destroy prohibited material so that material to which children should not be exposed is removed from these communities.

The amendments to the Classification Act will apply only to prescribed areas, as defined in what will become the *Northern Territory National Emergency Response Act 2007*.

Explanation of the changes

Item 1 inserts a new Part 10, entitled 'Material prohibited in prescribed areas', into the Commonwealth Classification Act.

Part 10 consists of four Divisions: Division 1 provides for preliminary matters, including definitions, which apply only for the purposes of Part 10; Division 2 sets out offences relating to the possession, control and supply of prohibited material; Division 3 makes provision for the seizure and forfeiture of prohibited material; and Division 4 provides for miscellaneous matters.

Division 1 – Preliminary

New section 99 – Definitions

Aside from the definitions addressed in further detail below, most of the definitions contained in Part 10 are relatively self-explanatory and do not require further explanation.

The definition of ***police officer*** refers to the definition of ***constable*** in the *Crimes Act 1914*. Constable is defined in that Act to mean ‘a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory’.

This broad definition enables the Australian Federal Police and police from States and Territories other than the Northern Territory to assist in the enforcement of the prohibitions in Part 10.

The definition of ***prescribed area*** will be the same as that contained in what will become the *Northern Territory National Emergency Response Act 2007*. This will provide a consistency of approach between the restrictions on alcohol contained in the *Liquor Act* (NT) and the prohibition upon films, computer games and publications. Making the prescribed areas consistent will also make it easier for people within those areas to adhere to the prohibitions and will simplify enforcement.

The definition of ***prohibited material*** refers to two further definitions, ***level 1 prohibited material*** and ***level 2 prohibited material***. These are used to differentiate between different offences for the possession of material.

The definition of level 1 prohibited material refers to:

- publications classified as Category 1 restricted or Category 2 restricted;
- unclassified publications that would be likely to be classified Category 1 restricted or Category 2 restricted;
- films classified X18+;
- unclassified films that would be likely to be classified X18+; or
- prohibited advertisements.

Under the National Classification Code, Category 2 Restricted Publications are those publications (except RC publications) that:

- (a) explicitly depict sexual or sexually related activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or
- (b) depict, describe or express revolting or abhorrent phenomena in a way that is likely to cause offence to a reasonable adult and are unsuitable for a minor to see or read.

Category 1 Restricted Publications are publications (except RC publications and Category 2 restricted publications) that:

- (a) explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult; or
- (b) describe or express in detail violence or sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or
- (c) are unsuitable for a minor to see or read.

X18+ films are films (except RC films) that:

- (a) contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultive language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult; and
- (b) are unsuitable for a minor to see.

The categories as set out in the Code are given further detail in the classification Guidelines.

'Prohibited advertisement' at (e) refers to an advertisement for a film, publication or computer game which is, or would be likely to be, refused approval under the Classification Act. This has been included in the definition to ensure that high level material cannot escape the provisions of Part 10 by being presented as an advertisement that is not otherwise classifiable. Advertisements for films, publications and computer games are expressly excluded from the definitions of films, publications and computer games under the Classification Act.

The definition of level 2 prohibited material refers to material described in the Classification Act as:

- refused classification (RC) films, computer games or publications; or

- unclassified films, computer games or publications that would be likely to be classified RC.

Under the Code, RC films, computer games and publications are RC films, computer games and publications that:

- (a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or
- (b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or
- (c) promote, incite or instruct in matters of crime or violence.

In addition, RC computer games are those that are unsuitable for a minor to see or play.

The RC category is given further detail in the classification Guidelines.

The definition of **supply** is not an exhaustive list, but outlines some of the ways in which prohibited material may be placed in a person's possession or control.

New section 100 – Concurrent operation of State and Territory laws

The provision clarifies that Part 10 is to apply in addition to State and Territory legislation, and Northern Territory law in particular, insofar as it applies to the prescribed areas. It contemplates that there may be a potential overlap between existing or future State and Territory legislation and the provisions of Part 10. Where an overlap occurs, this provision preserves the operation of the State and Territory legislation.

Such an overlap may occur, for example, where a person in a State sells and delivers X18+ films to a person in a prescribed area. The sale of X18+ material is prohibited under State law. The action may also breach the provisions of Part 10. Both prohibitions are intended to operate, so that Part 10 does not limit the actions to be taken by State law enforcement bodies to enforce the existing prohibitions on sale of this material.

Division 2 – Offences

The offence provisions have been drafted to operate in conjunction with the Criminal Code in relation to issues such as the required intention, knowledge or recklessness. In addition, the possession offences differentiate between possession of material that is currently restricted to adults, but accommodated within the classification system, and material which is or would be Refused Classification.

New section 101 – Possession or control of level 1 prohibited material in prescribed areas.

This provision makes the possession or control, in a prescribed area, of level 1 prohibited material an offence. Unlike existing offences in some State and Territory classification enforcement legislation, the prohibition applies to mere possession of the prohibited material without any intention of copying or selling.

The penalty for this offence is 50 penalty units. Section 4AA of the *Crimes Act 1914* currently provides that one penalty unit is \$110.

New section 102 – Possession or control of level 2 prohibited material in prescribed areas.

This provision makes the mere possession or control, in a prescribed area, of level 2 prohibited material (as defined in section 91) an offence.

The penalty for this offence is 100 penalty units. The penalty is higher than for possession or control of level 1 prohibited material as the impact of the level 2 material is higher.

New section 103 – Supplying prohibited material in and to prescribed areas

This provision prohibits the supply of prohibited materials in and to prescribed areas. For the prohibition on prohibited materials in prescribed areas to be effective it is necessary to prevent material from entering these areas by prohibiting delivering or sending such material to those communities.

The provision applies to activities conducted outside of the prescribed areas and jurisdictions other than the Northern Territory. It is intended to stop material at its source by preventing mail order companies sending material to a community, and residents or visitors sending or delivering material into a community. Supply has been given a broad definition to capture material provided to a person in a prescribed area, whether or not there is a commercial element to the transaction.

The provision is modelled on 'trafficking' provisions in the Criminal Code. However, because trafficking under the Criminal Code includes an intention to sell, the term supply has been used and defined to include distribution not for profit. This is intended to ensure that commercial traffickers are appropriately covered, but also better suits the cultural situation and the policy objective of Part 10.

Subsection (1) creates a general offence for the supply, preparation for supply, transportation for supply, guarding or concealing prohibited material for supply or possession of prohibited material with the intention to supply, to a person in a prescribed area.

Section 5.6 of the Criminal Code applies to this offence, which means that intention is the fault element for the elements of the offence in paragraph 103(1)(a), and recklessness is the fault element for the elements of the offence in paragraphs 103(1)(b)-(c).

The penalty for this offence is 100 penalty units.

Subsection (2) creates a separate offence for the supply, preparation for supply, transportation for supply, guarding or concealing prohibited material for supply or possession of prohibited material with the intention to supply, to a person in a prescribed area where the supply is for five or more items of prohibited material. Five or more items is considered to be a quantity likely to indicate a commercial transaction, or to indicate that the items are not intended solely for personal use.

The penalty for supplying five or more items is 200 penalty units or imprisonment for two years. The differentiation between penalties for general supply and supply of five or more items ensures that while it is an offence to supply any prohibited material, very small quantities of material are not subject to unduly heavy penalties.

Subsection (3) creates a presumption that a person who sends, transports, conceals or possesses five or more items of prohibited material in a prescribed area intends to supply it. The reversal of the onus of proof in this context is considered appropriate to assist in prosecutions of people trafficking in commercial quantities of prohibited material.

Subsection (4) provides that the presumption created by subsection (3) may be rebutted. Under section 13.4 of the Criminal Code, the defendant bears the legal burden for establishing that he or she did not have an intention to supply.

New section 104 – Body corporate managers taken to have committed offences

This provision provides for the liability of a person involved in any governance, management or administration of the business of a body corporate where that body corporate has committed an offence under Part 10. This is to ensure the persons responsible for supplying prohibited material to prescribed areas are personally held accountable.

Subsection (1) provides for the strict liability of a body corporate manager (as defined for the purposes of Part 10) for any offences against Part 10 committed by a body corporate.

Subsection (2) provides a defence for body corporate managers where an offence was committed without their knowledge and where that manager has taken all reasonable steps to prevent the commission of the offence. Under section 13.4 of the Criminal Code, the defendant bears the legal burden for establishing the elements of the defence.

This provision is consistent with the current provisions of Part XV of the Northern Territory Classification Act.

New section 105 – Division does not apply to postal services

This provision ensures that Australia Post and other operators of postal and parcel services will not be guilty of an offence under Part 10 if, in the normal course of providing a postal service, they supply prohibited material to prescribed area.

This allows normal postal and parcel services to continue without placing a burden on Australia Post or other operators to scrutinise the material they are transmitting, which would be unduly onerous and would conflict with community expectations that mail remains confidential.

Division 3 – Seizure and forfeiture of prohibited material

New section 106 – Seizure of prohibited material

This provision gives police the power to seize any material found within a prescribed area, where a police officer suspects on reasonable grounds that it is prohibited material under Part 10.

The ability to seize potentially prohibited material, without obtaining court orders or convictions, is necessary to ensure this material is removed from prescribed areas without delay.

Entry and search powers provided for under Part 1AA of the *Crimes Act 1914* apply. Part 1AA provides for entry and search of premises only under warrant or with consent.

The Government will consider further whether additional powers are required to allow for a police officer to enter and search premises within a prescribed community without a warrant in certain circumstances.

This amendment would be made to address concerns about the potential limitations of relying upon the *Crimes Act 1914* warrants regime to enforce the offences under Part 10. Those concerns include restricted access to magistrates and courts in remote areas and the risk that evidence will be lost or moved during the time it takes police to obtain search warrants.

New section 107 – Seizure notices

This provision imposes a requirement upon the police officer who has seized material under Part 10 to issue a notice to the owner of the material or the person from whom the material was seized, unless the owner cannot be identified and the material was not seized from a person.

Subsection (3) provides that the notice must include certain information, including the grounds upon which the material was seized (that is, that the material is suspected to be prohibited material), procedures for the possible return of the material under Part 10, and that material is forfeited to the Commonwealth if it is not returned to the owner.

New section 108 – Return of seized material – on request

This provision enables the owner of seized material to make a request for the return of the material to the police officer who seized the material.

The police officer must return the material to the owner if the police officer is satisfied on reasonable grounds that the material is not prohibited material under Part 10 and the request is made by the owner within 60 days after the date of the seizure notice or, if a seizure notice wasn't served, 60 days from the seizure of the material.

This provides a simple mechanism for return of material if it is not prohibited material. This could be demonstrated, for example, by a search of the Classification Board's classification decisions, which is available at www.classification.gov.au.

New section 109 – Return of seized material – application to magistrate

Where a police officer refuses to return seized material on a request of the owner made under Part 10, the owner may then apply to a magistrate for an order that the material should be returned. An application to the magistrate under this provision must be made within 60 days of the police officer's refusal.

Subsection (3) provides that the magistrate must order that the material be returned if he or she is satisfied that the material is not prohibited material.

This provision ensures that owners of material seized under Part 10 have a further recourse for the return of that material if the police officer who seized material believes it is prohibited material and refuses to return it.

It also allows for a magistrate to determine whether or not he or she considers the material to be prohibited material under Part 10.

New section 110 – Seized material forfeited to the Commonwealth

Material that is seized under Part 10 and that is not returned to its owner under section 108 or 109 is forfeited to the Commonwealth and must be destroyed, disposed of or otherwise dealt with as the Minister directs.

This forfeiture provision does not rely on a conviction being obtained before material is forfeited. The emphasis of these provisions is in removing inappropriate material from circumstances where children may access it, not on prosecutions and convictions.

New section 111 – Relationship of Division to other laws

Similarly to new section 100, this provision is intended to ensure that the enactment of these new offences does not in any way limit the operations of law enforcement agencies under existing laws, nor inadvertently adversely affect powers conferred by other legislation.

Division 4 – Miscellaneous

New section 112 – Evidence

Section 87 of the Commonwealth Classification Act provides for the Director, on application, to issue a certificate about action taken, or not taken, under the Commonwealth Classification Act. These evidentiary certificates are used by enforcement agencies in conducting prosecutions under State and Territory classification enforcement legislation, to provide evidence that particular material has, for example, not been submitted for classification. This provision provides for the use of these evidentiary certificates in proceedings under this Part.

New section 113 – Compensation for acquisition of property

This provision provides a mechanism for the payment of compensation, should the operation of the new Part result in an acquisition of property for which, under the Constitution, compensation on just terms is payable, but has not been provided.

New section 114 – Minister may repeal provisions of this Part

This provision allows the Minister, by legislative instrument, to repeal some or all of the new provisions. Allowing for repeal by legislative instrument, effective when the instrument is made, means that, if circumstances arise whereby some or all of the provisions are no longer required, those provisions may be repealed without the delay involved in enacting repealing legislation. Repeal of certain provisions may be necessary, for example, if the Northern Territory enacts legislation which prohibits possession of some or all of the material which is dealt with by the Commonwealth provisions.

Subsection 33(3) of the *Acts Interpretation Act 1901* would allow the Minister to repeal or revoke the repealing legislative instrument, and so does not apply to an instrument made by the Minister under this section.

This provision also exempts instruments made under it from the disallowance and sunset provisions of the Legislative Instruments Act. A repealing instrument is analogous to a Proclamation commencing legislation, and similarly should not be subject to disallowance. As the effect of disallowance would be to revive offence provisions, this could cause legislative confusion, practical difficulties and potential injustice to those in the prescribed areas.

The instrument is exempt from the sunset regime because new section 115 sunsets all provisions of the Part after five years. It would be otiose and confusing for an instrument which repealed some or all of the Part to be sunsetted after the Part itself has ceased to have effect.

New section 115 – Sunset provision

As they are part of the emergency response, the provisions of the Part will cease to have effect after five years.

Schedule 2 – Law enforcement

Summary

Schedule 2 to the bill amends Commonwealth law enforcement legislation to facilitate implementation of the Government's emergency measures to protect Aboriginal children in the Northern Territory from harm.

Part 1 of Schedule 2 amends the *Australian Crime Commission Act 2002* (the ACC Act) to:

- allow the Australian Crime Commission (ACC) Board to authorise the ACC to undertake an intelligence operation or an investigation (an operation/investigation), or a special operation/investigation (in which case the full range of ACC special coercive powers may be used), into ***Indigenous violence or child abuse***;
- allow an ACC examiner to request or compel information, documents or things held by a State or Territory agency that are relevant to an operation/investigation, provided an arrangement is in force between the Commonwealth and the State or Territory, and
- extend the term of appointment for ACC Examiners from five to 10 years.

Part 2 of Schedule 2 amends the *Australian Federal Police Act 1979* (the AFP Act) to put beyond doubt that members of the Australian Federal Police (AFP) deployed to the Northern Territory Police Service (NTPOL) and appointed 'special constables' can exercise all of the powers and duties of a member of the NTPOL under Northern Territory legislation.

Background

Part 1—Australian Crime Commission

The ACC, established under the ACC Act, has both intelligence and investigative functions and capabilities and has a range of special coercive powers. These powers can only be exercised where an operation/investigation has been authorised by the ACC Board.

For example, the power to summon witnesses and compel evidence (section 28) and to compel the production of documents (section 29) are only available where the ACC Board has authorised an operation/investigation under subsection 7C(1) and determined that the operation/investigation is a special operation/investigation under subsections 7C(2) and (3).

Currently, under the ACC Act, the ACC Board can only authorise an operation/investigation (and determine that it is a special operation/investigation) into **federally relevant criminal activity** (see for example, the definition of **intelligence operation** in subsection 4(1) and sections 7A and 7B).

The term federally relevant criminal activity turns on the definitions of **relevant criminal activity** and **serious and organised crime** in subsection 4(1). Currently, these definitions operate in a way that would preclude the ACC Board from authorising an operation/investigation into Indigenous violence or child abuse where the relevant criminal activity could not be characterised as serious and organised crime. In particular, the definition of serious and organised crime in subsection 4(1) has a number of cumulative elements. The first set of elements relates to the nature of the activity as 'organised'. The second set of elements concern the type of offence, and require that the offence be punishable by imprisonment for a period of three years or more.

Offences concerning Indigenous violence or child abuse (including sexual offences) are unlikely to meet the first set of elements, which require that the offence involves two or more offenders, substantial planning and organisation, and the use of sophisticated methods and techniques. Even if the first set of elements were met, not all offences relevant to Indigenous violence or child abuse would be captured by the list of the type of offences which for present purposes would be limited to 'violence offences' and certain Commonwealth child sex offences involving the use of a carriage service.

The government wishes to ensure that the existing special coercive powers of the ACC should be available for the purpose of an operation/investigation (or special operation/investigation) into Indigenous violence or child abuse, should the ACC Board decide that their use for this purpose should be authorised.

In addition, while ACC examiners have the power to compel evidence, information, documents or things from a person or an employee (or former employee) of a Commonwealth agency (sections 19A, 20, 28 and 29), there is currently no power for ACC examiners to compel evidence, information, documents or things held by a State or Territory agency. This is because subsection 4(1) and section 5 operate such that the ACC Act does not bind the Crown in right of a State, the Australian Capital Territory or the Northern Territory.

The government wants to enable ACC examiners to request or require information, documents or things relevant to an investigation/operation held by a State (including a Territory) agency. This power would only operate where an arrangement between the Commonwealth Minister and appropriate State (or Territory) Minister is in force.

Currently, section 46B of the ACC Act provides that an ACC examiner may only be appointed for a maximum term of five years (inclusive of reappointments). Because of the significant role of ACC examiners, the maximum period of appointment (and reappointment) for ACC examiners would be extended from five to 10 years.

Part 2—Australian Federal Police

The powers, functions and duties of the AFP are set out in the AFP Act. Functions of the AFP (set out in section 8) include investigating State offences with a federal aspect and providing police services and police support services for the purposes of assisting, or cooperating with, an Australian law enforcement agency. A ***member of the AFP*** (defined in section 4) has the powers and duties set out in section 9.

As part of the Australian Government's commitment to increase policing resources in the Northern Territory, members of the AFP will be deployed to the Northern Territory and appointed as ***special constables*** of the NTPOL. Because of the operation of Northern Territory legislation, special constables can exercise all of the powers and duties of a member of the NTPOL.

The government wishes to amend the AFP Act and put beyond doubt that members of the AFP deployed to NTPOL and appointed as special constables can exercise all of the powers and duties of a member of the NTPOL under Northern Territory legislation.

As some members of the AFP have already been deployed and appointed as special constables of the NTPOL, the amendment would apply retrospectively from 21 June 2007, the date of the Australian Government's announcement of the national emergency response to protect Aboriginal children in the Northern Territory. This is a facilitative and clarifying provision and has direct legal effect only on AFP officers. That is, it does not operate to remove rights.

Explanation of the changes

Part 1—Australian Crime Commission

Division 1—Indigenous violence or child abuse

Division 1 amends and creates a number of definitions in subsection 4(1), and makes corresponding amendments to subsection 4(2), and sections 7C, 55A and 55B, to enable the ACC Board to authorise an operation/investigation (and determine that it is a special operation/investigation) into Indigenous violence or child abuse.

Item 1 inserts a definition of ***child*** into subsection 4(1).

This definition is relevant to the definition of Indigenous violence or child abuse inserted by **item 5**.

Item 2 inserts a definition of **child abuse** into subsection 4(1).

This definition is relevant to the definition of **Indigenous violence or child abuse** inserted by **item 5**.

The definition of child abuse inserted by **item 2** is intended to capture a broad range of offences relating to the abuse and neglect of children, and the sexual abuse of children. However, only offences that have a maximum penalty of three years or more imprisonment will be caught by this definition. This is to ensure consistency with the application of the ACC's coercive powers to serious and organised crime offences, which are limited by the definition of serious and organised crime in subsection 4(1) to relevant offences that carry a maximum penalty of three years or more imprisonment.

The definition of child abuse does not include any reference to violence offences as these are captured by the definition of **serious violence**, inserted by **item 9**, which is expressed to include violence against children.

Item 3 repeals and replaces the definition of federally relevant criminal activity in subsection 4(1). Currently, subsection 4(1) defines federally relevant criminal activity as relevant criminal activity where the serious and organised crime is an offence against the law of the Commonwealth or of a Territory, or is a State offence that has a federal aspect.

The definition inserted by **item 3** provides that federally relevant criminal activity is relevant criminal activity where a **relevant crime** is an offence against the law of the Commonwealth or of a Territory, or is a State offence that has a federal aspect.

The definition of relevant crime is inserted by **item 6**.

Item 4 inserts a definition of **Indigenous person** in subsection 4(1).

This definition is relevant to the definition of Indigenous violence or child abuse inserted by **item 5**.

Item 5 inserts a definition of Indigenous violence or child abuse in subsection 4(1).

The various elements of this term (child, child abuse, Indigenous person and serious violence) are inserted by **items 1, 2, 4 and 9**.

The term Indigenous violence or child abuse reflects the current scope of the ACC's National Intelligence Task Force into Violence and Child Abuse in Australia's Indigenous Communities (NIITF).

The ACC Board established the NIITF following the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities held on 26 June 2006.

The NIITF, which commenced operation in September 2006, gathers and coordinates intelligence across Australia, with the support of Commonwealth, State and Territory law enforcement agencies, to enhance the understanding of the nature and extent of violence and abuse in Indigenous communities.

The purpose of the NIITF as an intelligence task force is to collect information and pass that information on to the relevant authorities in the appropriate jurisdiction. The relevant authority may then act on that intelligence, for example, to obtain evidence of and prosecute a person for a criminal offence (such as a child sex offence). As an intelligence task force, the NIITF does not have access to special coercive powers.

Item 6 inserts a definition of relevant crime into subsection 4(1).

The definition of relevant crime, in conjunction with the amended definitions of federally relevant criminal activity (inserted by Item 3) and relevant criminal activity (inserted by **item 7**) is critical to enabling the ACC Board to authorise an operation/investigation (and determining that it is a special operation/investigation) into either serious and organised crime or Indigenous violence or child abuse.

Item 6 also includes a note to signpost subsection 4(2) as expanding the meaning of relevant crime. Subsection 4(2) is amended by **item 10**.

Item 7 repeals and replaces the definition of relevant criminal activity in subsection 4(1).

Currently, subsection 4(1) defines relevant criminal activity as any circumstances implying, or any allegations, that a serious and organised crime may have been, may be being, or may in the future be, committed against a law of the Commonwealth, of a State or of a Territory.

The definition inserted by **item 7** provides that relevant criminal activity is any circumstances implying, or any allegations, that a relevant crime may have been, may be being, or may in the future be, committed against a law of the Commonwealth, of a State or of a Territory.

Item 8 repeals the note at the end of the definition of serious and organised crime.

Currently, subsection 4(2) expands the meaning of serious and organised crime in certain circumstances and the note signposts this. However, **item 10** amends subsection 4(2) to expand instead the meaning of relevant crime in certain circumstances. **Item 6** provides that relevant crime is either serious and organised crime or Indigenous violence or child abuse, and inserts an appropriate note at the end of the definition of relevant crime. Accordingly, a note is no longer required at the end of the definition of serious and organised crime.

Item 9 inserts a definition of serious violence into subsection 4(1).

This definition is relevant to the definition of Indigenous violence or child abuse inserted by **item 5**.

The definition of serious violence inserted by **item 9** is intended to capture a broad range of violence against the person offences. However, only offences that have a maximum penalty of three years or more imprisonment will be caught by this definition. This is to ensure consistency with the application of the ACC's coercive powers to serious and organised crime offences, which are limited by definition of serious and organised crime in subsection 4(1) to relevant offences that carry a maximum penalty of three years or more imprisonment.

Item 10 replaces references to serious and organised crime in subsection 4(2) with relevant crime.

The definition of relevant crime is inserted by **item 6**.

Currently, subsection 4(2) expands the definition of serious and organised crime to include incidental offences that, while not serious and organised crime, may be connected with or part of a course of activity involving the commission of a serious and organised crime.

Item 10, in conjunction with the insertion of the definition of relevant crime in **item 6**, operates so that subsection 4(2) expands the definition of relevant crime to include incidental offences that, while not serious and organised crime or Indigenous violence or child abuse, may be connected with or part of a course of activity involving the commission of a serious and organised crime or Indigenous violence or child abuse.

An incidental offence connected with, or part of, a course of activity involving the commission of Indigenous violence or child abuse might be, for example, the prevalence of illegal pornography or the abuse of alcohol or illicit substances. The amendment of subsection 4(2) by **item 10** is intended to ensure that the scope of an ACC operation/investigation (or special operation/investigation) includes relevant criminal activity that is an aggravating factor to, or otherwise causes, Indigenous violence or child abuse.

Item 11 replaces references to serious and organised crime in paragraph 7C(4)(b) with relevant crime.

Section 7C sets out the functions of the ACC Board, which include authorising the ACC to undertake an operation/investigation, and determining (in writing) that such an operation/investigation is a special operation/investigation. Subsection 7C(4) sets out the matters that must be included in a determination that an investigation/operation is a special investigation/operation.

Currently, under subparagraph 7C(4)(b), the ACC Board must state that the serious and organised crime (or crimes) are or include an offence (or offences) against the law of the Commonwealth, Territory or State.

Item 11, in conjunction with the insertion of the definition of relevant crime in **item 6**, operates so that paragraph 7C(4)(b) would now require the ACC Board to set out in the determination that the relevant crime, or relevant crimes, are or include an offence or offences against a law of the Commonwealth, a law of a Territory or a law of a State.

Item 12 provides that the requirement under amended paragraph 7C(4)(b) would only apply to determinations made after **item 11** commences.

Item 12 provides that the amendment made by **item 11** only applies to determinations made by the ACC Board on or after the day on which **item 11** commences.

This is to ensure that determinations made by the ACC Board prior to the commencement of **item 11**, which refer to the serious and organised crime (or serious and organised crimes), are not affected or otherwise invalidated by the new requirement that such determinations refer to the relevant crime (or relevant crimes).

Item 13 replaces references to serious and organised crime in paragraphs 55A(2)(a), (2)(c), (4)(a), (5)(a), (5B)(a) and (5C)(a) with relevant crime.

Each of the States, the Australian Capital Territory and the Northern Territory, has enacted legislation (State ACC Acts) to enable the ACC to conduct operations/investigations (or special operations/investigations) into serious and organised crime involving State or Territory offences. State ACC Acts confer on the ACC and its constituent elements duties, functions and powers under a law of a State or Territory.

Section 55A gives Commonwealth legislative consent to the conferral of duties, functions and powers under State or Territory laws on the ACC and its constituent elements.

As all State ACC Acts are currently limited to serious and organised crime, no duties, functions or powers have been conferred on the ACC by State or Territory laws in relation to Indigenous violence or child abuse.

However, if complementary changes are made to State ACC Acts to facilitate operations/investigations into Indigenous violence or child abuse, the amendments inserted by **item 13** ensure that Commonwealth legislative consent is already in place.

Item 14 replaces references to serious and organised crime (or crimes) in paragraph 55B(a) with relevant crime (or crimes).

Section 55B provides that, where duties, functions or powers have been conferred on the ACC by the ACC Act or by State or Territory laws, the ACC has the freedom of choice to use Commonwealth, State or Territory powers.

Currently, paragraph 55B(a) refers only to serious and organised crime or crimes.

To date, no duties, functions or powers have been conferred on the ACC by State or Territory laws in relation to Indigenous violence or child abuse. Therefore, the ACC can only use Commonwealth powers conferred by the ACC Act.

However, if complementary changes are made to State ACC Acts to facilitate operations/investigations into Indigenous violence or child abuse, the amendments inserted by **item 14** ensure that the ACC will have a choice of Commonwealth, State or Territory powers.

Division 2—Information etc. from State agencies

Sections 19A and 20 of the ACC Act provide a special mechanism for an ACC examiner to request or compel information, documents and things held by Commonwealth agencies for the purposes of an ACC investigation/operation. Failure to comply with certain requirements of sections 19A and 20 is a criminal offence. Sections 19A and 20 also override secrecy provisions in other Commonwealth legislation unless specifically preserved.

Subsection 19A(1) provides that an ACC examiner may serve a written request for information relevant to an operation/investigation on the **principal officer** of a Commonwealth agency, or on a person who is, or has been, a member, officer or employee of a Commonwealth agency. Principal officer is defined in subsection 19A(8).

Subsection 19A(2) further provides that an ACC examiner may serve a written request for a document or thing relevant to an operation/investigation on the principal officer of a Commonwealth agency.

Where the request for information, documents or things has been served on a **prescribed officer** of a Commonwealth agency, 19A(3) allows the prescribed officer to comply with the request. Prescribed officer is defined in subsection 19A(8).

Where the request for information, documents or things has been served on a person other than the prescribed officer (the other person), subsection 19A(4) allows the prescribed officer to direct the other person to comply with the request. It is an offence, punishable by 10 penalty units or imprisonment for six months, to fail to comply with a direction made under subsection 19A(4).

Subsections 19A(5) and (6) operate so that compliance with a request, or the direction to comply with a request, can only be made subject to certain secrecy provisions and other circumstances. All other secrecy provisions not expressly preserved by subsections 19A(5) are overridden. **Secrecy provision** is defined in subsection 4(1) and is amended by **item 15**.

Subsection 19A(7) provides that an action, suit or proceeding does not lie against a prescribed officer or current or former employees of a Commonwealth agency in relation to action taken in compliance with a request made under subsection 19A.

Subsection 19A(8) sets out definitions of a range of terms relevant to the operation of section 19A.

Subsection 20A(1) provides that an ACC examiner may compel information relevant to an operation/investigation by serving a written notice on the principal officer of a Commonwealth agency, or on a person who is, or has been, a member, officer or employee of a Commonwealth agency. Principal officer is defined in subsection 20(5).

Subsection 20(2) further provides that an ACC examiner may compel documents or things relevant to an operation/investigation by serving a written notice on the principal officer of a Commonwealth agency.

Subject to a **prescribed provision**, it is an offence to fail to comply with a notice under subsections 20(1) and (2), punishable by 10 penalty units or imprisonment for six months. A prescribed provision is defined in subsection 20(5).

Division 2 amends sections 5, 19A and 20 to enable an ACC examiner to request or compel information, documents or things held by Commonwealth and State (including Territory) agencies. The extension to State agencies will only operate only where an arrangement between the Commonwealth Minister and appropriate State (or Territory) Minister is in force in accordance with new section 20A.

This extension of sections 19A and 20 will enable an ACC examiner to request or compel information, documents or things held by Commonwealth and State agencies for operations/investigations into either Indigenous violence or child abuse, or serious or organised crime.

Item 15 amends the definition of **secrecy provision** in subsection 4(1). The definition of secrecy provision is relevant to sections 19A and 20 (as amended by **items 17 to 29**) and new section 20A (inserted by **item 30**).

Item 16 repeals and replaces section 5 to provide that the ACC Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory, of the Australian Capital Territory, and of Norfolk Island.

Item 17 amends subsections 19A(1) and (2) to provide that an ACC examiner's power to request information held by a State agency is subject to section 20A. (New section 20A is inserted by item 30.)

The note to **item 17** provides that the heading to section 19A is altered by omitting the word Commonwealth. This is because **items 17 to 22** extend the application of section 19A to State agencies (subject to an agreement under section 20A being in force).

Item 18 repeals and replaces subsection 19A(5) to provide that compliance with, or a direction to comply with, a request for information, documents or things is subject to, in the case of a:

- **Commonwealth agency**, certain secrecy provisions and other provisions set out in subsection 19A(6), and
- **State agency**, only those secrecy provisions preserved in an arrangement made under section 20A (inserted by **item 30**).

Item 19 repeals and replaces the definition of **agency** in subsection 19A(8) and provides that it means a Commonwealth agency or a State agency.

Currently, the definition of agency in subsection 19A(8) only refers to Commonwealth agencies. As **items 17 to 22** amend section 19A to apply to State agencies (where an arrangement under section 20A is in force), a new definition of agency is required.

Items 20 and 22 insert new definitions for Commonwealth agency and State agency into subsection 19A(8). The definition of State in subsection 4(1) operates so that State agencies include agencies of the Northern Territory and the Australian Capital Territory.

Item 20 inserts a definition of Commonwealth agency in subsection 19A(8). This definition is relevant to the definition of agency inserted into subsection 19A(8) by **item 19**.

Item 21 repeals and replaces the definition of principal officer in subsection 19A(8). Currently, the definition of principal officer in subsection 19A(8) only refers to the principal officer of Commonwealth agencies.

As **items 17 to 22** amend section 19A to apply to State agencies (where an arrangement under section 20A is in force), a new definition of principal officer is required.

Item 21 provides that, in addition to the persons described as the principal officer for Commonwealth agencies (currently paragraphs (a) and (b) of the definition of principal officer in subsection 19A(8)), the principal officer of a State agency is the person holding office or acting as head (however described) of the agency.

It is the government's intention that the broad definition of principal officer for a State agency should capture the person ordinarily considered responsible for the agency, such as the Secretary of a department, the Chief Executive Officer or the President of the Board of a statutory authority, or the Managing Director of a government business entity, however that person might be described.

Item 22 inserts a definition for State agency in subsection 19A(8). This is relevant to the definition of agency inserted into subsection 19A(8) by **item 19**.

It is the government's intention that paragraphs (a) through (c) of the definition of State agency should capture a broad range of agencies, including departments, statutory authorities and government business entities.

The definition of **State** in subsection 4(1) operates so that State agencies include agencies of the Northern Territory and the Australian Capital Territory.

Item 23 amends subsections 20(1) and (2) to provide that an ACC examiner's power to request information held by a State agency is subject to section 20A.

Item 30 inserts new section 20A.

The note in **item 23** provides that the heading to section 20 is altered by omitting the word Commonwealth. This is because **items 23 to 29** extend the application of section 20 to State agencies (subject to an agreement under section 20A being in force).

Item 24 repeals and replaces the definition of agency in subsection 20(5) and provides that it means a Commonwealth agency or a State agency.

Currently, the definition of agency in subsection 20(5) only refers to Commonwealth agencies.

As **items 23 to 29** amend section 20 to apply to State agencies (where an arrangement under section 20A is in force), a new definition of agency is required.

Items 25 and 26 insert new definitions for Commonwealth agency and State agency into subsection 20(5). The definition of State in subsection 4(1) operates so that State agencies include agencies of the Northern Territory and the Australian Capital Territory.

Item 25 inserts a definition of Commonwealth agency in subsection 20(5). This definition is relevant to the definition of agency inserted into subsection 20(5) by **item 24**.

Item 26 inserts the word 'or' at the end of paragraph (a) of the definition of prescribed provision in subsection 20(5). This amendment is necessary to give effect to the amendment made by **item 27**.

Item 27 amends the definition of prescribed provision in subsection 20(5) by inserting a reference to a secrecy provision specified in an arrangement made under section 20A.

Item 28 repeals and replaces the definition of principal officer in subsection 20(5). Currently, the definition of principal officer in subsection 20(5) only refers to the principal officer of Commonwealth agencies.

As **items 23 to 29** amend section 20 to apply to State agencies (where an arrangement under section 20A is in force), a new definition of principal officer is required.

Item 28 provides that, in addition to the persons currently described as the principal officer for Commonwealth agencies in subsection 20(5), the principal officer of a State agency is the person holding office or acting as head (however described) of the agency.

It is the Government's intention that the broad definition of principal officer for a State agency inserted by **item 28** should capture the person ordinarily considered responsible for the agency, such as the Secretary of a department, the Chief Executive Officer or the President of the Board of a statutory authority, or the Managing Director of a government business entity, however that person might be described.

Item 29 inserts a new definition for State agency into subsection 20(5). This is relevant to the definition of agency inserted into subsection 20(5) by **item 24**.

It is the Government's intention that paragraphs (a) through (c) of the definition of State agency inserted by **item 29** should capture a broad range of agencies, including departments, statutory authorities and government business entities.

The definition of State in subsection 4(1) operates so that State agencies include agencies of the Northern Territory and the Australian Capital Territory.

Item 30 inserts new section 20A after section 20. The extension of sections 19A and 20 to State agencies will only apply where an arrangement under section 20A is in force.

Section 20A provides for arrangements to be made between the Commonwealth Minister and appropriate State Minister in relation to the provision of information, documents or things under sections 19A and 20 (as amended by **items 17 to 29**).

The definition of State in subsection 4(1) operates so that a reference to a Minister of the Crown of a State includes a Minister of the Crown of the Northern Territory and the Australian Capital Territory.

Proposed subsection 20A(1) provides that the power for the Commonwealth Minister and appropriate State Minister to make an arrangement in relation to the provision of information, documents or things under sections 19A and 20 does not limit the power for such Ministers to make arrangements under section 21.

Subsection 21(1) of the ACC Act allows the Commonwealth Minister and the appropriate Minister of the Crown of a State to enter into an arrangement for the ACC Board to receive information/intelligence relating to relevant criminal activities from a State or from an authority of the State. The definition of State in subsection 4(1) operates so that arrangements could also be made with the appropriate Minister of the Crown of the Northern Territory or Australian Capital Territory for the ACC Board to receive information/intelligence relating to relevant criminal activities from that Territory or from authority of that Territory.

The power to make arrangements under subsection 21(1) is focused on the ability of the ACC Board to receive information, whereas arrangements under new section 20A are focused on enabling an ACC examiner to request or compel information, documents or things held by State agencies. In addition, a State (or Territory) could only give the ACC Board such information in accordance with any relevant secrecy provisions of a State (or Territory) law.

However, provided an arrangement under section 20A is in force, sections 19A and 20 (as amended by **items 17 to 29**) override State secrecy provisions that have not been preserved under such an arrangement.

Proposed subsections 20A(2) and (3) make it clear that an arrangement under section 20A may specify conditions in relation to the provision of information, documents and things, including, for example, the State agencies to which sections 19A and 20 apply, the type of information, documents or things that can be requested or compelled, and the State secrecy provisions that are preserved.

Proposed subsections 20A(5) to (7) provide that either party may revoke an arrangement unilaterally, and that an arrangement may be varied by mutual agreement.

An arrangement under proposed section 20A will only be in force (and therefore sections 19A and 20 will only extend to State agencies) if the arrangement has been published in the *Gazette*.

Similarly, under proposed subsections 20A(8) and (9), the revocation or variation of an arrangement must also be published in the *Gazette* and will only be in force: in the case of a revocation, from the date specified in the notice or revocation; or, in the case of a variation, once published in the *Gazette*.

Paragraph 17(m) of the *Acts Interpretation Act 1901* provides that *Gazette* means the *Commonwealth of Australian Gazette*. It is the government's intention that the Commonwealth Minister is responsible for causing the arrangement, or a copy of the revocation or variation of an arrangement, to be published in the *Gazette*.

Proposed subsection 20A(10) provides that an arrangement under subsection (1), or a revocation or variation of an arrangement under subsections 20A(5) to (7), are not legislative instruments. This is because such arrangements (a notice, revocation or variation to an arrangement) are not legislative in character within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law.

Proposed subsection 20A(11) makes it clear that the power to request or compel information, documents or things under sections 19A and 20 (as amended by **items 17 to 29**) only apply to State agencies where an arrangement under subsection 20A(1) has been published in the *Gazette* and is in force.

For example, assume that an arrangement between the Commonwealth and State A has been published in the *Gazette*. An ACC examiner then serves a written notice on the principal officer of an agency in State A compelling the production of documents relevant to an operation/investigation. State A then requests that the Commonwealth Minister revoke the arrangement. The Commonwealth Minister then publishes a copy of the revocation in the *Gazette*. However, the principal officer is still obliged to comply with the notice to produce such documents, because the request was made while an arrangement (that was published in the *Gazette*) is still in force.

Item 31 is an application provision that provides that the offences in sections 19A and 20 (as amended by **items 17 to 29**) only apply to conduct engaged in on or after the 28th day on which the Act receives Royal Assent.

For example, assume that an arrangement between the Commonwealth and State A has been published in the *Gazette* prior to the 28th day after Royal Assent. An ACC examiner then serves a written notice on the principal officer of an agency in State A compelling the production of documents relevant to an operation/investigation. While the principal officer could comply with the request, there is no way to enforce the notice against the principal officer until the 28th day after Royal Assent.

Division 3—Appointment of examiners

Item 32 amends subsection 46B(4) to provide that each period of appointment for an ACC examiner must not exceed five years, and that the sum of an examiner's first appointment, and any period or periods of reappointment, must not exceed 10 years.

The extension of an examiner's maximum period of reappointment beyond five years will ensure continuity of operations/investigations, and ensure the ACC can take advantage of the experience of examiners. Further, the potential for a longer period of appointment will be more attractive to prospective candidates.

Item 33 is an application provision to ensure that the removal of the five year aggregate limit on appointments of examiners also applies to persons appointed prior to the commencement of **item 32**.

Part 2—Australian Federal Police

Item 34 amends subsection 9(1) by inserting new paragraph (bc) after paragraph (bb) to provide that, when performing functions in the Northern Territory, a member of the AFP has:

- the powers and duties conferred or imposed on a constable or an officer of police by or under any law (including the common law) of the Territory, and
- any powers and duties conferred on the member by virtue of his or her appointment as a Special Constable of the Police Force of the Northern Territory by or under a law of the Territory.

Item 35 is an application provision, providing that the amendment made by **item 34** has retrospective application.

As some members of the AFP have already been deployed and appointed as special constables of the NTPOL, the proposed amendment will apply retrospectively from 21 June 2007. This is the date of the government's announcement of the national emergency response to protect Aboriginal children in the Northern Territory. This is a facilitative and clarifying provision and has direct legal effect only on AFP officers. That is, it does not operate to remove rights.

No person's rights will be adversely affected by retrospective operation of the amendment made by **item 34**.

Schedule 3 – Infrastructure

Summary

This Schedule ensures that the Commonwealth, Commonwealth authorities, the Northern Territory and Northern Territory authorities can retain an interest in buildings and infrastructure constructed or upgraded on Aboriginal land in the future where they fund the construction or major upgrade. This will ensure that, in the future, government investment on Aboriginal land will be protected. The Schedule specifies: the circumstances in which the Commonwealth, a Commonwealth authority, the Northern Territory or a Northern Territory authority will have statutory rights over buildings and infrastructure; the content of the statutory rights; the power to deal with statutory rights; and the obligation to negotiate in good faith for a lease. The Schedule also provides a mechanism for the statutory rights to come to an end once the buildings and infrastructure are no longer required by the person who holds the statutory rights.

Background

Each year, the Commonwealth and Northern Territory provide funding for the construction and major upgrade of buildings and infrastructure on Aboriginal land across the Northern Territory. As a general rule, the Commonwealth and Northern Territory have not retained ownership of the buildings and infrastructure, nor obtained any interest in the land on which they are constructed.

This Schedule provides a mechanism for the Commonwealth, a Commonwealth authority, the Northern Territory or a Northern Territory authority to retain a continuing interest in buildings and infrastructure which is constructed or subject to a major upgrade where the construction or upgrade is to be undertaken with their funding. The continuing interest will only apply where the construction or major upgrade is undertaken with the consent of the Land Council concerned. The Land Council may only consent where they are satisfied that the traditional Aboriginal owners, as a group, consent and any affected Aboriginal communities and groups have been consulted.

The continuing interest takes the form of specified statutory rights which are conferred on the Commonwealth, a Commonwealth authority, the Northern Territory, or a Northern Territory authority. In addition, the buildings and infrastructure are deemed to be the property of the government or authority which has the statutory rights. Where there are multiple funding sources, the Schedule sets out a mechanism to determine who will have the statutory rights.

The Schedule provides that the statutory rights apply to a **construction area**, which is the area of land on which the construction or upgrade is proposed to be undertaken. This area must be identified in a determination by the Minister or Chief Minister of the Northern Territory (Chief Minister). The Schedule then outlines the content of the statutory rights and the power to deal with the statutory rights.

The Schedule generally requires the person who has the statutory rights and the Land Council concerned to negotiate in good faith for the grant of a lease under section 19 of the Land Rights Act.

Where the buildings or infrastructure are no longer required by the person who holds the statutory rights, the Schedule provides a mechanism for the statutory rights to come to an end. The Schedule also provides for the removal of the buildings when no longer required if requested by the Land Council concerned.

Explanation of the changes

Item 1 inserts a new Part IIB into the Land Rights Act, relating to statutory rights over buildings and infrastructure.

New Division 1 (new section 20T) of new Part IIB contains definitions for that Part.

Commonwealth rights

New Division 2 (new sections 20U to 20ZE) of new Part IIB contains provisions about statutory rights held by the Commonwealth or a Commonwealth authority.

New Subdivision A (new section 20U and 20V) of new Division 2 provides for the application of new Division 2.

New subsection 20U(1) provides that new Division 2 applies where certain requirements are met. New paragraph 20U(1)(a) requires that **works** be proposed for an area of Aboriginal land which is set out in a determination by the Minister (the initial construction area). New paragraph 20U(1)(b) requires that the relevant Land Council consent to the works. New paragraph 20U(1)(c) provides that the Division will not apply if the construction area is leased under section 19 or 19A of the Land Rights Act. New paragraph 20U(1)(d) requires either that the works be funded solely by the Commonwealth or a Commonwealth authority or, where there are multiple funding sources, the Minister has determined that the Division applies. New subsection 20U(2) provides that determinations by the Minister under new subparagraphs 20U(1)(a)(ii) or 20U(1)(d)(ii) are not legislative instruments. This is to assist readers as the determinations are not legislative instruments within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law.

New section 20V provides a mechanism for determining who the **funding body** is and, as a consequence, who will have the statutory rights. New subsections 20V(1) and (2) provide that, where there is a single funding source, the funding body is the person who provided the funding. New subsection 20V(3) provides that, where there are multiple funding sources, the Minister must determine whether the funding body is the Commonwealth or the Commonwealth authority. New subsection 20V(4) provides that a determination by the Minister under new subsection 20V(3) is not a legislative instrument. This is to assist readers as the determination is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. . Therefore, the provision is merely declaratory of the law.

New Subdivision B (new sections 20W to 20ZB) of new Division 2 provides for the conferral of **statutory rights**.

New subsection 20W(1) provides that the funding body has the statutory rights in relation to the construction area as set out in new subsection 20W(2). The statutory rights cover both construction and post construction stages. New subsection 20W(3) clarifies that the statutory rights are exclusive.

New section 20X permits the funding body to transfer the statutory rights and identifies who the statutory rights may be transferred to. The statutory rights may only be transferred once.

New subsection 20Y(1) permits the person who holds the statutory rights to allow others to exercise the statutory rights. New subsection 20Y(3) provides that an instrument under new subsection 20Y(1) is not a legislative instrument. This is to assist readers as the determination is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. . Therefore, the provision is merely declaratory of the law. New subsection 20Y(2) clarifies that a person who is given permission to exercise the statutory rights is not the rights holder under new sections 20W or 20X.

New section 20Z provides for the ownership of the buildings and infrastructure.

New section 20ZA permits the area over which the statutory rights apply to be varied by agreement.

New section 20ZB provides that the Commonwealth or a Commonwealth authority is authorised to acquire a permit under new section 20Y to exercise all or some of the statutory rights. This provision, in conjunction with existing section 3C, means that the *Lands Acquisition Act 1989* will not apply to such acquisitions (see paragraph 21(1)(c) of that Act).

New Subdivision C (new sections 20ZC and 20ZD) of new Division 2 provides for leases covering the construction area and outlines the effect of leases on the statutory rights.

New section 20ZC provides for the negotiation of a lease. New subsection 20ZC(1) requires the person who has the statutory rights and the Land Council concerned to negotiate in good faith for the grant of a lease under section 19 of the Land Rights Act (a section 19 lease) covering the construction area. The obligation to negotiate for a lease does not apply where a person has the statutory rights after a section 19 lease which covered the construction area comes to an end. This means that, if the person who has the statutory rights had negotiated a section 19 lease, they will not be required to negotiate for a new lease when the first lease comes to an end.

New subsection 20ZC(2) provides that there is no requirement to negotiate for a lease if a lease is granted under section 19A of the Land Rights Act (a section 19A lease) and that lease covers the construction area.

New subsection 20ZC(3) provides that, where the statutory rights are suspended by new subsection 20ZD(2) because a five year lease is in force under section 31 of the *Northern Territory National Emergency Response Act 2007*, the funding body and the Land Council concerned must commence to negotiate in good faith for the grant of a section 19 lease. This ensures that even though the statutory rights will not take effect until the five year lease comes to an end, the funding body and the Land Council must negotiate for a lease. New section 52 of what will be the *Northern Territory National Emergency Response Act 2007* deals with the grant of a section 19 lease while a lease is in force under that Act.

New subsection 20ZC(4) provides that the Commonwealth or a Commonwealth authority is authorised to dispose of an interest in land covered by a lease granted to it under section 19 of the Land Rights Act following a lease negotiation under new subsections 20ZC(1) and (3), where the disposal is in accordance with the terms of the lease. **Dispose** and **interest** are defined in new subsection 20ZC(5). These provisions, in conjunction with existing section 3C, mean that the *Lands Acquisition Act 1989* will not apply to such disposals (see paragraph 117(1)(c) of that Act).

New subsection 20ZC(6) provides that a Land Trust must not grant a section 19 lease that covers the construction area unless it is a lease to the person who has the statutory rights or, in a case where the statutory rights were suspended while a lease is in force under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*, the funding body. This subsection ceases to apply when it is determined that the buildings or infrastructure are no longer required.

New section 20ZD outlines the effect of leases on the statutory rights.

New subsection 20ZD(1) provides that the operation of Subdivision B (which provides for statutory rights) is suspended while a section 19 lease is in force.

New subsection 20ZD(2) provides that, where works are proposed to be undertaken while a lease is in force under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*, the operation of new Subdivision B (which provides for the conferral of statutory rights) is suspended while such a lease is in force. New Subdivisions A and C can apply while such a lease is in force.

New subsection 20ZD(3) provides for the cessation of the operation of Division 2 if a section 19A lease is in force and the person who has the statutory rights is granted a sublease over the construction area.

New Subdivision D (new section 20ZE) of new Division 2 provides for the cessation of the operation of new Division 2.

New subsection 20ZE(1) provides that new Division 2 ceases to apply when the person who holds the statutory rights determines, in writing, that they no longer require the buildings or infrastructure. New subsection 20ZE(7) provides that such a determination is not a legislative instrument. This is to assist readers as the determination is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law.

New subsection 20ZE(3) provides that a determination cannot be revoked, while new subsection 20ZE(4) provides that the person must give a copy of the determination to the Land Council concerned.

New subsections 20ZE(5) and (6) continue to apply after a determination is made under new subsection 20ZE(1) and provide for the removal of buildings at the request of the Land Council.

Northern Territory rights

New Division 3 (new sections 20ZF to 20ZP) of new Part IIB contains provisions about statutory rights held by the Northern Territory or a Northern Territory authority.

New Subdivision A (new sections 20ZF and 20ZG) of new Division 3 provides for the application of new Division 3.

New subsection 20ZF(1) provides that new Division 3 applies where certain requirements are met. New paragraph 20ZF(1)(a) requires that works be proposed for an area of Aboriginal land which is set out in a determination by the Chief Minister (the initial construction area). New paragraph 20ZF(1)(b) requires that the relevant Land Council consent to the works. New paragraph 20ZF(1)(c) provides that the Division will not apply if the construction area is leased under section 19 or 19A of the Land Rights Act. New paragraph 20ZF(1)(d) requires either that the works be funded solely by the Northern Territory or a Northern Territory authority or, where there are multiple funding sources, the Minister has determined that the Division applies. New subsection 20ZF(2) provides that a determination by the Chief Minister under new subparagraph 20ZF(1)(a)(ii) and a determination by the Minister under new subparagraph 20ZF(1)(d)(ii) are not legislative instruments. This is to assist readers as the determinations are not legislative instruments within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law.

New section 20ZG provides a mechanism for determining who the funding body is and consequently who will have the statutory rights. New subsections 20ZG(1) and (2) provide that, where there is a single funding source, the funding body is the person who provided the funding. New subsection 20ZG(3) provides that, where there are multiple funding sources, the Chief Minister must determine whether the funding body is the Northern Territory or the Northern Territory authority. New subsection 20ZG(4) provides that a determination by the Chief Minister under new subsection 20ZG(3) is not a legislative instrument. This is to assist readers as the determination is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law.

New Subdivision B (new sections 20ZH to 20ZM) of new Division 3 provides for the conferral of statutory rights.

New subsection 20ZH(1) provides that the funding body has the statutory rights in relation to the construction area as set out in new subsection 20ZH(2). The statutory rights cover both construction and post-construction stages. New subsection 20ZH(3) provides that the statutory rights are exclusive.

New section 20ZI permits the funding body to transfer the statutory rights and identifies who the statutory rights may be transferred to. The statutory rights may only be transferred once.

New subsection 20ZJ(1) permits the person who holds the statutory rights to allow others to exercise the statutory rights. New subsection 20ZJ(3) provides that an instrument under new subsection 20ZJ(1) is not a legislative instrument. This is to assist readers as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law. New subsection 20ZJ(2) clarifies that a person who is given permission to exercise the statutory rights is not the rights holder under new section 20ZH or 20ZI.

New section 20ZK provides for the ownership of the buildings and infrastructure.

New section 20ZL permits the area over which the statutory rights apply to be varied by agreement.

New section 20ZM provides that the Commonwealth or a Commonwealth authority is authorised to acquire a permit under new section 20ZJ to exercise all or some of the statutory rights. This provision, in conjunction with existing section 3C, means that the *Lands Acquisition Act 1989* will not apply to such acquisitions (see paragraph 21(1)(c) of that Act).

New Subdivision C (new sections 20ZN and 20ZO) of new Division 3 provides for leases covering the construction area and outlines the effect of leases on the statutory rights.

New section 20ZN provides for the negotiation of a lease. New subsection 20ZN(1) provides for the person who has the statutory rights and the Land Council concerned to negotiate in good faith for the grant of a section 19 lease covering the construction area. The obligation to negotiate for a lease does not apply where a person has the statutory rights after a section 19 lease which covered the construction area ends. This means that, if the person who has the statutory rights had negotiated a section 19 lease, they will not be required to negotiate for a new lease when the first lease comes to an end.

New subsection 20ZN(2) provides that there is no requirement to negotiate for a lease if a section 19A lease is granted and that lease covers the construction area.

New subsection 20ZN(3) provides that, where the statutory rights are suspended by new subsection 20ZO(2) because a five year lease is in force under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*, the funding body and the Land Council concerned must negotiate in good faith for the grant of a section 19 lease. This ensures that, even though the statutory rights will not take effect until the five year lease comes to an end, the funding body and the Land Council must commence negotiations for a lease. New section 52 the *Northern Territory National Emergency Act 2007* deals with the grant of a section 19 lease while a lease is in force under that Act.

New subsection 20ZN(4) provides that the Commonwealth or a Commonwealth authority is authorised to dispose of an interest in land covered by a section 19 lease granted to them following a lease negotiation under new subsections 20ZN(1), where the disposal is in accordance with the terms of the lease. **Dispose** and **interest** are defined in new subsection 20ZN(5). These provisions, in conjunction with existing section 3C, mean that the *Lands Acquisition Act 1989* will not apply to such disposals (see paragraph 117(1)(c) of that Act).

New subsection 20ZN(6) provides that a Land Trust must not grant a section 19 lease that covers the construction area unless it is a lease to the person who has the statutory rights or, in a case where the statutory rights are suspended while a lease is in force under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*, the funding body. This subsection ceases to apply when it is determined that the buildings or infrastructure are no longer required.

New section 20ZO outlines the effect of leases on the statutory rights.

New subsection 20ZO(1) provides that the operation of Subdivision B (which provides for statutory rights) is suspended while a section 19 lease is in force.

New subsection 20ZO(2) provides that, where works are proposed to be undertaken while a lease is in force under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*, the operation of new Subdivision B (which provides for the conferral of statutory rights) is suspended while such a lease is in force. New Subdivisions A and C can apply while such a lease is in force.

New subsection 20ZO(3) provides for the cessation of the operation of Division 3 if a section 19A lease is in force and the person who has the statutory rights is granted a sublease over the construction area.

New Subdivision D (new section 20ZP) of new Division 3 provides for the cessation of the operation of new Division 3.

New subsection 20ZP(1) provides that new Division 3 ceases to apply when the person who holds the statutory rights determines, in writing, that they no longer require the buildings or infrastructure. New subsection 20ZP(7) provides that such a determination is not a legislative instrument. This is to assist readers as the determination is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law.

New subsection 20ZP(3) provides that a determination cannot be revoked, while new subsection 20ZP(4) provides that the person must give a copy of the determination to the Land Council concerned.

New subsections 20ZP(5) and (6) continue to apply after a determination is made under new subsection 20ZP(1) and provide for the removal of buildings at the request of the Land Council.

Item 2 inserts new subsections 70(8) and (9) into the Land Rights Act. New subsection 70(8) ensures that, for the purposes of section 70 of the Land Rights Act (which provides for entering and remaining on Aboriginal land), the statutory rights a person has or may exercise under new Part IIB are included in the definition of estates or interests in land.

Item 3 inserts new subsections 71(3) and (4) into the Land Rights Act. New subsection 71(3) ensures that, for the purposes of section 71 of the Land Rights Act (which provides for traditional rights to use and occupy land), the statutory rights a person has or may exercise under new Part IIB are included in the definition of estates or interests in land.

Schedule 4 – Access to Aboriginal land

Summary

This Schedule makes changes to the provisions governing access to Aboriginal land to increase interaction with the wider community and promote economic activity. It removes the requirement for people to obtain permits to enter and remain on certain areas of Aboriginal land, including common areas of townships, road corridors, airstrips and boat landings. It also allows for the placement of temporary restrictions on access to these areas to protect the privacy of cultural events or public health and safety. The Schedule allows government officials and members of Parliament to enter and remain on Aboriginal land when performing relevant duties and for people to attend court hearings on Aboriginal land.

Background

This Schedule deals with upgrades of roads and changes to the prohibition on entering or remaining on **Aboriginal land**, as defined in subsection 3(1) of the Land Rights Act. The prohibition is in subsection 70(1).

Explanation of the changes

Major upgrades of roads

Items 1 to 8 amend section 68 of the Land Rights Act to cover major upgrades of roads on **Aboriginal land**.

Item 1 inserts new subsection 68(1A) to provide that a major upgrade of a road over Aboriginal land cannot be carried out unless the relevant Land Council consents in writing to the upgrade. This is intended to cover upgrades which involve more than routine maintenance (such as regular grading), for example widening or sealing of roads.

Items 2 to 4 provide that the Land Council may not consent to a major upgrade unless the traditional owners consent and the Aboriginal communities affected have had adequate opportunity to express their views.

Items 5 to 7 provide that a person other than an Aboriginal is not entitled to use the roads upgraded in accordance with new subsection 68(1A), except where the Minister directs otherwise or as provided by Part VII or by a law of the Northern Territory. **Item 7** also ensures that, where a road has been constructed in accordance with subsection 68(1), a person who is entitled, by other provisions in Part VII, including the new sections 70B, 70E and 70G to use the road, can use that road.

Item 8 provides that section 68 does not apply to certain major upgrades.

Entry by government officials, officers, and authorised persons

Item 9 repeals and substitutes subsection 70(2A) and inserts new subsections 70(2AA) to 70(2BC). The new subsection 70(2A) will expand the people who have a defence against the prohibition in subsection 70(1) to include:

- certain officials, including the Governor-General and the Administrator of the Northern Territory, in performing official duties;
- a member of Parliament or a member of the Legislative Assembly of the Northern Territory, in performing relevant duties;
- certain candidates for election (on campaign);
- persons performing functions under laws of the Commonwealth other than the Land Rights Act;
- persons exercising powers under any law of the Commonwealth or under a law of the Northern Territory;
- persons performing functions or exercising powers as a ***Commonwealth or Northern Territory officer***, as defined in new subsection 70(2AA); and
- persons performing local government functions or exercising local government powers.

New subsection 70(2AA) provides for a broad definition of Commonwealth or Northern Territory officer for the purposes of new paragraph 70(2A)(f).

The defendant bears an evidential burden for the new defence, as is the case with the existing defence in section 70(2A). This is appropriate in the circumstances as, if the prosecution were to bear the evidential burden, this would be an onerous burden, given the various situations in which a defence is available or access can be authorised.

New defence where entry authorised by Minister

Item 10 inserts new subsections 70(2BA) to (2BD). New subsection 70(2BA) provides for a new defence against the offence in subsection 70(1) where a person enters or remains in accordance with an authorisation under new subsection 70(2BB).

The defendant bears an evidential burden for the new defence, as is the case with the existing defences in section 70. This is appropriate in the circumstances as, if the prosecution were to bear the evidential burden, this would be an onerous burden, given the various situations in which a defence is available or access can be authorised.

New subsection 70(2BB) provides that the Minister may authorise, in writing, a specified person or a class of persons to enter and remain on Aboriginal land. New subsection 70(2BC) provides that such an authorisation is not a legislative instrument. This is to assist readers as the authorisation is not an instrument within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law.

New subsection 70(BD) provides that the defence in new subsection 70(2BA) is only available for five years, being the period of the emergency response in the Northern Territory.

New defences in relation to entry onto community land

Item 11 inserts a new subsection 70(2D) to provide a defence for people entering or remaining on **community land** (as defined in new subsection 70(2E)). It is a defence if the person enters or remains on premises on community land, other than sacred sites, with the permission of the **occupier** (as defined in new subsection 70(2E)) of the premises.

New subsection 70(2E) defines community land as having the meaning given by section 70A, generally being land described in Schedule 7 or in the regulations made for the purposes of new paragraph 70A(2)(b). The definition of occupier in new subsection 70(2E) includes a person present at the premises and in apparent control of the premises.

The defence in new subsection 70(2D) will be available, for example, when people have been invited into residences by the occupiers, or when occupiers indicate that shops or arts centres are open for sales.

Accessing community land

Item 12 inserts new sections 70A to 70H. Essentially new sections 70A to 70F provide for limited public rights of access over certain community land and for public rights of access to allow travel to and from community land, subject to any limitations provided in regulations. New section 70G applies more broadly to accessing any Aboriginal land for the purposes of attending court hearings and new section 70H protects traditional rights from any restrictions imposed on public access.

New subsection 70A(1) provides that **vested Aboriginal land** in new sections 70B to 70F means only land held by a Land Trust for an estate in fee simple.

New subsection 70A(2) provides that, in new sections 70B to 70F, community land means land described in Schedule 7 (subject to new subsection 70A(3)) or in the regulations made for the purposes of new paragraph 70A(2)(b). The land described in Schedule 7 is the land granted under the Land Rights Act over which five year leases are to be acquired, plus several other communities.

New subsection 70A(3) provides that regulations may reduce an area described in Schedule 7. This is to allow for situations where the land over which a five year lease is acquired is reduced, during or after that time, to identify more specifically the developed areas. Since such reductions may have the effect of reducing the areas of Aboriginal land over which there are limited public rights of access, it is appropriate to delegate the power to reduce areas and affect Schedule 7 to the Governor-General.

Getting to community land by road

New section 70B broadly provides for public rights of access to allow travel to and from community land by road, subject to any limitations provided in regulations.

New subsection 70B(1) provides that a person may enter or remain on certain roads (on vested Aboriginal land), and buffer areas around these roads (excluding sacred sites), for the purpose of travelling to and from any community land, and provided the entry or remaining is not for a purpose that is unlawful.

The roads to which new subsection 70B(1) applies include roads providing access to community land and specified in a determination under new subsection 70B(2). New subsection 70B(2) provides for the Minister to specify roads (or parts of roads). New subsection 70B(3) provides that such a determination is not a legislative instrument. This is to assist readers, as the determination is not an instrument within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law. New subsection 70B(4) provides for appropriate publication of determinations, but failure to comply with it does not affect the validity of a determination (subsection 70B(5)).

New subsection 70B(6) provides for limitations regarding entering and remaining on roads/buffer areas under new subsection 70B(1) to be prescribed in regulations. Without limiting the generality of new subsection 70B(6), the regulations can apply specified Northern Territory legislation as if the roads/buffer areas were open to the public (new subsections 70B(7) and (8)). These provisions enable appropriate regulatory control of the areas which may be accessed.

New subsection 70B(9) provides that the Land Trust concerned is not under an obligation to maintain a road or buffer area to a level that is suitable for use by the public. Currently, Land Trusts may have some legal obligations as owners to maintain roads and buffer areas to a level that is suitable for use by residents, people providing services and others who access Aboriginal land. Where new subsection 70B(1) covers such roads and buffer areas, new subsection 70B(9) makes clear that there is no extra obligation on Land Trusts by virtue of the public access allowed. This does not mean that roads and buffer areas will not be maintained as currently most road maintenance for major roads is government-funded and this is expected to continue to be the case.

New subsection 70B(10) protects the relevant Land Trust from liability for accidents, where a person is relying on new subsection 70B(1) to enter or remain on vested Aboriginal land. It does not protect the Land Trust from liability where accidents involve persons who have other rights to use roads and buffer areas, and these people are not relying on new subsection 70B(1). In effect, new subsection 70B(10) means that a person who suffers an accident (to their person or property) as a result of doing an act in reliance on new subsection 70B(1) or as a result of another person doing an act in reliance on new subsection 70B(1) cannot sue the Land Trust. Since Land Trusts may still have obligations as owners to persons who have other rights to use roads and buffer areas, Land Trusts will not be free to act negligently in relation to roads and buffer areas.

New subsection 70B(11) provides that section 70B does not limit the application of section 19 or 19A in relation to the roads/buffer areas covered by subsection 70B(1). This provision ensures that a Land Trust may lease such roads/buffer areas, but the leases will remain subject to the public rights of access provided.

New subsection 70B(12) provides for temporary restrictions on public rights of access to roads/buffer areas to be imposed under Northern Territory law for certain purposes, except where there is a lease to the **Director** (as defined in subsection 3(1) and being the Director of National Parks). New subsection 70B(13) provides that, where there is such a lease, the Director may impose temporary restrictions for certain purposes. Both provisions allowing for temporary restrictions are subject to regulations made under new subsection 70B(14).

A determination by the Director under new subsection 70B(13) is not a legislative instrument (new subsection 70B(16)). The Attorney-General has granted an exemption from the Legislative Instruments Act on the basis that the restrictions will be temporary in nature and may need to take effect on short notice, particularly where they are necessary to protect public health and safety. New subsection 70B(17) provides for appropriate publication of determinations, but failure to comply with it does not affect the validity of a determination (new subsection 70B(18)).

Getting to community land by air

New subsection 70C broadly provides for public rights of access to allow travel to and from community land by air, subject to any limitations provided in regulations.

New subsection 70C(1) provides that a person may board or disembark an aircraft that is on certain aerodromes on vested Aboriginal land but outside community land, if the person does so in accordance with the directions of the operator of the aircraft and the boarding or disembarking is for the purpose of travelling to and from any community land, and provided the boarding or disembarking is not for a purpose that is unlawful.

Where new subsection 70C(1) applies, the person may, under new subsection 70C(2), access the passenger waiting areas and the areas for collection of baggage, and may go between these areas and the road providing access to the aerodrome.

New subsection 70C(3) provides for similar rights to board and disembark in relation to an aircraft that is on an aerodrome that is within community land.

New subsection 70C(4) provides that the boarding and disembarking rights do not extend to authorising the landing of an aircraft at an aerodrome. This means that, where aerodromes are on vested Aboriginal land, operators of aircraft need to have appropriate permission to land aircraft. Where they do, persons may board and disembark as provided in new subsections 70C(1) and (3).

New subsection 70C(5) provides that new subsections 70C(1) and (3) do not apply in relation to an aerodrome that, at the time of commencement, was covered by a lease under section 19, while that lease is in force. This protects the rights of existing leaseholders, who also have the benefit of subsection 70(2).

New subsection 70C(6) has a similar effect where, at commencement, there is a section 19A lease, and the aerodrome is covered by a lease preserved as an interest under subsection 19A(10).

New subsection 70C(7) provides for limitations regarding boarding, disembarking and entry to be prescribed in regulations. This enables appropriate regulatory control of the aerodromes that may be accessed.

New subsection 70C(8) provides that the Land Trust concerned is not under an obligation to maintain an aerodrome to a level that is suitable for use by the public. Currently Land Trusts may have some legal obligations as owners to maintain aerodromes to a level that is suitable for use by operators of aircraft, people providing services and others who use the aerodromes. Where new subsections 70C(1) or (3) apply, new subsection 70C(8) makes clear that there is no extra obligation on Land Trusts by virtue of the public access allowed.

New subsection 70C(9) protects the relevant Land Trust from liability for accidents, where a person is relying on new subsection 70C(1), (2) or (3) to enter or remain on vested Aboriginal land. It does not protect the Land Trust from liability where accidents involve persons who have other rights to use the aerodromes, and these people are not relying on new subsections 70C(1), (2) or (3). In effect, new subsection 70C(9) means that a person who suffers an accident (to their person or property) as a result of doing an act in reliance on new subsection 70C(1), (2) or (3) or as a result of another person doing an act in reliance on new subsection 70C(1), (2) or (3) cannot sue the Land Trust. Since Land Trusts may still have obligations as owners to persons who have other rights to use aerodromes, Land Trusts will not be free to act negligently in relation to aerodromes.

New subsection 70C(10) provides that s70C does not limit the application of section 19 or 19A in relation to aerodromes covered by new subsection 70C(1) or (3). This provision ensures that a Land Trust may lease such aerodromes in future, but the leases will remain subject to the public rights of access provided.

Getting to community land by boat

New subsection 70D broadly provides for public rights of access to allow travel to and from community land by boat, subject to any limitations provided in regulations.

New subsection 70D(1) provides that a person may board or disembark a vessel that is at certain landing places on vested Aboriginal land but outside community land, if the boarding or disembarking is for the purpose of travelling to and from any community land, and provided the boarding or disembarking is not for a purpose that is unlawful.

Where new subsection 70D(1) applies, the person may, under new subsection 70D(2), access the passenger waiting areas and the areas for collection of baggage, and may go between these areas and the road providing access to the landing place.

New subsection 70D(3) provides for similar rights to board and disembark in relation to a vessel that is on a landing place within community land.

New subsection 70D(4) provides that the boarding and disembarking rights do not extend to authorising the landing or berthing of a vessel at a landing place. This means that, where vessels are landed or berthed on vested Aboriginal land, persons in charge of vessels need to have appropriate permission. Where they do, persons may board and disembark as provided in new subsections 70D(1) and (3).

New subsection 70D(5) provides that new subsections 70D(1) and (3) do not apply in relation to a landing place that, at the time of commencement, was covered by a lease under section 19, while that lease is in force. This protects the rights of existing leaseholders, who also have the benefit of subsection 70(2).

New subsection 70D(6) has a similar effect where, at commencement, there is a section 19A lease, and the landing place is covered by a lease preserved as an interest under subsection 19A(10).

New subsection 70D(7) provides for limitations regarding boarding, disembarking and entry to be prescribed in regulations. This enables appropriate regulatory control of the landing places that may be accessed.

New subsection 70D(8) provides that the Land Trust concerned is not under an obligation to maintain a landing place to a level that is suitable for use by the public. Currently, Land Trusts may have some legal obligations as owners to maintain landing places to a level that is suitable for use by operators of vessels, people providing services and others who use the landing places. Where new subsections 70D(1) or (3) apply, new subsection 70D(8) makes clear that there is no extra obligation on Land Trusts by virtue of the public access allowed.

New subsection 70D(9) protects the relevant Land Trust from liability for accidents, where a person is relying on new subsections 70D(1), (2) or (3) to enter or remain on vested Aboriginal land. It does not protect the Land Trust from liability where accidents involve persons who have other rights to use the landing places, and these people are not relying on new subsection 70D(1), (2) or (3). In effect, new subsection 70D(9) means that a person who suffers an accident (to their person or property) as a result of doing an act in reliance on new subsection 70D(1), (2) or (3) or as a result of another person doing an act in reliance on new subsection 70D(1), (2) or (3) cannot sue the Land Trust. Since Land Trusts may still have obligations as owners to persons who have other rights to use landing places, Land Trusts will not be free to act negligently in relation to landing places.

New subsection 70D(10) provides that s70D does not limit the application of section 19 or 19A in relation to landing places covered by new subsection 70D(1) or (3). This provision ensures that a Land Trust may lease such landing places in future, but the leases will remain subject to the public rights of access provided.

Roads within community land

New section 70E broadly provides for public rights of access to allow travel within community land, subject to any limitations provided in regulations.

New subsection 70E(1) provides that a person may enter or remain on roads within community land provided the entry or remaining is not for a purpose that is unlawful.

New subsections 70E(2) and (3) provide that the Minister may exclude some roads (or parts of roads) from the application of new subsection 70E(1). New subsection 70E(4) provides that such a determination is not a legislative instrument. This is to assist readers, as the determination is not an instrument within the meaning of section 5 of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law. New subsection 70E(5) provides for appropriate publication of determinations, but failure to comply with it does not affect the validity of a determination (new subsection 70E(6)).

New subsection 70E(7) provides for limitations regarding entering and remaining on roads under new subsection 70E(1) to be prescribed in regulations. Without limiting the generality of new subsection 70E(7), the regulations can apply specified Northern Territory legislation as if the roads were open to the public (new subsections 70E(8) and (9)). These provisions enable appropriate regulatory control of the roads which may be accessed.

New subsection 70E(10) provides that the Land Trust concerned is not under an obligation to maintain a road to a level that is suitable for use by the public. Currently, Land Trusts may have some legal obligations as owners to maintain roads within community land to a level that is suitable for use by residents, people providing services and others who access Aboriginal land. Where new subsection 70E(1) covers such roads, new subsection 70E(10) makes clear that there is no extra obligation on Land Trusts by virtue of the public access allowed. This does not mean that roads will not be maintained as, currently, most road maintenance for roads within community land is government-funded and this is expected to continue to be the case.

New subsection 70E(11) protects the relevant Land Trust from liability for accidents, where a person is relying on new subsection 70E(1) to enter or remain on vested Aboriginal land. It does not protect the Land Trust from liability where accidents involve persons who have other rights to use roads, and these people are not relying on new subsection 70E(1). In effect, new subsection 70E(11) means that a person who suffers an accident (to their person or property) as a result of doing an act in reliance on new subsection 70E(1) or as a result of another person doing an act in reliance on new subsection 70E(1) cannot sue the Land Trust. Since Land Trusts may still have obligations as owners to persons who have other rights to use roads, Land Trusts will not be free to act negligently in relation to roads.

New subsection 70E(12) provides that section 70E does not limit the application of section 19 or 19A in relation to the roads covered by subsection 70E(1). This provision ensures that a Land Trust may lease such roads, but the leases will remain subject to the public rights of access provided.

New subsection 70E(13) provides for temporary restrictions on public rights of access to roads to be imposed under Northern Territory law for certain purposes, except where there is a lease to the Director. New subsection 70E(14) provides that, where there is such a lease, the Director may impose temporary restrictions for certain purposes.

Where a road to which new subsection 70E(1) applies is covered by a lease under section 19A, temporary restrictions on public rights of access to roads can be imposed for certain purposes through determinations made by the holder of the township lease (new subsection 70E(15)). The determination-making power of the Executive Director of Township under new subsection 70E(15) may be delegated under new subsection 70E(16).

Where a road to which new subsection 70E(1) applies is covered by a lease under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*, the Minister may determine temporary restrictions for certain purposes (new subsection 70E(17)).

The provisions allowing for temporary restrictions are subject to regulations made under new subsection 70E(18).

A determination under new subsection 70E(14), (15) or (17) is not a legislative instrument (new subsection 70E(20)). The Attorney-General has granted an exemption from the Legislative Instruments Act on the basis that the restrictions will be temporary in nature and may need to take effect on short notice, particularly where they are necessary to protect public health and safety. New subsection 70E(21) provides for appropriate publication of determinations, but failure to comply with it does not affect the validity of a determination (new subsection 70E(22)).

Common areas within community land

New section 70F broadly provides for public rights of access to **common areas** (as defined in new subsection 70F(2)) within community land, subject to any limitations provided in regulations.

New subsection 70F(1) provides that a person may enter or remain on common areas within community land provided the entry or remaining is not for a purpose that is unlawful.

New subsection 70F(2) provides that new subsection 70F(1) does not apply in relation to a common area that, at the time of commencement, is covered by a lease under section 19, while that lease is in force. This protects the rights of existing leaseholders, who also have the benefit of subsection 70(2).

New subsection 70F(3) has a similar effect where, at commencement, there is a section 19A lease, and the common area is covered by a lease preserved as an interest under subsection 19A(10).

New subsection 70F(4) provides for limitations regarding entering and remaining on common areas under new subsection 70F(1) to be prescribed in regulations. Without limiting the generality of new subsection 70F(4), the regulations may provide that common areas are taken to be public parks for the purposes of specified Northern Territory legislation relating to public parks (new subsections 70F(5) and (6)). These provisions enable appropriate regulatory control of the common areas which may be accessed.

New subsection 70F(7) provides that the Land Trust concerned is not under an obligation to maintain a common area to a level that is suitable for use by the public. Currently, Land Trusts may have some legal obligations as owners to maintain common areas to a level that is suitable for use by residents, people providing services and others who access Aboriginal land. Where new subsection 70F(1) covers such common areas, new subsection 70F(7) makes clear that there is no extra obligation on Land Trusts by virtue of the public access allowed.

New subsection 70F(8) protects the relevant Land Trust from liability for accidents, where a person is relying on new subsection 70F(1) to enter or remain on vested Aboriginal land. It does not protect the Land Trust from liability where accidents involve persons who have other rights to use common areas, and these people are not relying on new subsection 70F(1). In effect, new subsection 70F(8) means that a person who suffers an accident (to their person or property) as a result of doing an act in reliance on new subsection 70F(1) or as a result of another person doing an act in reliance on new subsection 70F(1) cannot sue the Land Trust. Since Land Trusts may still have obligations as owners to persons who have other rights to use roads and buffer areas, Land Trusts will not be free to act negligently in relation to common areas.

New subsection 70F(9) provides that section 70F does not limit the application of section 19 or 19A in relation to the common areas covered by subsection 70F(1). This provision ensures that a Land Trust may lease such common areas, but the leases will remain subject to the public rights of access provided.

New subsection 70F(10) provides for temporary restrictions on public rights of access to common areas to be imposed under Northern Territory law for certain purposes, except where there is a lease to the Director. New subsection 70F(11) provides that, where there is such a lease, the Director may impose temporary restrictions for certain purposes.

Where a common area to which new subsection 70F(1) applies is covered by a lease under section 19A, temporary restrictions on public rights of access to common areas can be imposed for certain purposes through determinations made by the holder of the township lease (new subsection 70F(12)). The determination-making power of the Executive Director of Township under new subsection 70F(12), may be delegated under new subsection 70F(13).

Where a common area to which new subsection 70F(1) applies is covered by a lease under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*, the Minister may determine temporary restrictions for certain purposes (new subsection 70F(14)).

The provisions allowing for temporary restrictions are subject to regulations made under new subsection 70F(15).

A determination under new subsection 70F(11), (12) or (14) is not a legislative instrument (new subsection 70F(17)). The Attorney-General has granted an exemption from the Legislative Instruments Act on the basis that the restrictions will be temporary in nature and may need to take effect on short notice, particularly where they are necessary to protect public health and safety. New subsection 70F(18) provides for appropriate publication of determinations, but failure to comply with it does not affect the validity of a determination (subsection 70F(19)).

New subsection 70F(20)) provides for a definition of common area, which does not include buildings, sacred sites or areas prescribed in the regulations. Without limiting the generality of new subsection 70F(20)), areas may be prescribed by reference to their use (new subsections 70F(21) and (22)).

Attending court hearings

New subsection 70G(1) provides that a person may enter or remain on vested Aboriginal land for the purpose of attending or leaving a court hearing.

New subsection 70G(2) provides that new subsection 70G(1) does not apply to attending any part of a court hearing that is not open to the public.

New subsection 70G(3) provides for limitations regarding entering and remaining on land under new subsection 70G(1) to be prescribed in regulations

Traditional rights

New section 70H provides that new sections 70B to 70G do not limit the application of section 71. This ensures the traditional rights to use or occupy land covered by s71 are not, for example, affected by temporary closures.

Reciprocal legislation of the Northern Territory

Item 13 inserts new paragraph 73(1)(ba). This extends the legislative power of the Northern Territory to include laws providing for temporary restrictions on public access as referred to in new subsection 70B(12), 70E(13) or 70F(10), but such laws may not restrict traditional rights to use or occupy land covered by section 71.

Aboriginal Land Act (Northern Territory)

Item 14 inserts new section 74AA to override subsections 5(5) and 5(6) of the *Aboriginal Land Act* of the Northern Territory to the extent that they allow a Land Council to revoke a permit issued by the traditional owners and vice versa. In future only the Land Council will be able to revoke permits issued by it under subsection 5(1) and only the traditional owners will be able to revoke permits issued by them under subsection 5(2).

Community land

Item 15 inserts Schedule 7 which describes land for the purposes of paragraph (a) of the definition of community land in new subsection 70A(2).

Application provision for new section 74AA

Item 16 inserts an application provision for the changes effected by item 14. **Item 16** provides that the changes to the ability of the Land Council and traditional owners to revoke permits issued by each other will apply to permits issued after commencement of **item 16** and permits issued before commencement still in force immediately before commencement.

Lease to Director of National Parks

Item 17 prevents the operation of Schedule 4 resulting in a fundamental breach of the lease to the Director of National Parks covering Uluru-Katatjuta National Park. This means that the lease cannot be terminated as a result of the operation of Schedule 4.

Compensation for acquisition of property

Item 18 provides for the payment of compensation for any acquisition of property.

Subitem 18(1) disapplies section 50(2) of the *Northern Territory (Self-Government) Act 1978* in relation to any acquisition of property that occurs as a result of:

- the operation of Schedule 4;
- any action taken under or in accordance with sections 70B to 70G of the Land Rights Act (as inserted by Schedule 4).

Subitem 18(2) provides that, if any of the matters referred to in **subitem 18(1)** would result in an ***acquisition of property*** from a person within the meaning of section 51(xxxi) of the Constitution, otherwise than on ***just terms***, the Commonwealth is liable to pay reasonable compensation to the person.

Subitem 18(3) provides that, if the amount of compensation cannot be agreed between the Commonwealth and the person, the person may take proceedings in a court of competent jurisdiction for a determination of reasonable compensation.

Subitem 18(4) defines acquisition of property and just terms for the purposes of **subitem 18(2)**. These terms are defined as having the same meanings as in section 51(xxxi) of the Constitution.

Schedule 5 – Miscellaneous

Summary

This Schedule makes several amendments to Land Rights Act, notably, relating to township leases granted under section 19A, land leased under section 31 of what will become the *Northern Territory National Emergency Response Act 2007* and the definition of estates and interests in sections 70 and 71 of the Land Rights Act.

Background

The amendments made by this Schedule relate to: leases granted under section 19A of the Land Rights Act (a section 19A lease); the definition of estate or interest in land for the purpose of sections 70 and 71 of the Land Rights Act; and extending a defence under subsection 70(2C) of the Land Rights Act to land leased to the Commonwealth under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*.

Explanation of the changes

Item 1 inserts a new subsection 19A(1A) into the Land Rights Act, which authorises a Commonwealth entity to acquire a section 19A lease. This provision, in conjunction with existing section 3C, means that the *Lands Acquisition Act 1989* will not apply to such acquisitions (see paragraph 21(1)(c) of that Act).

Item 2 repeals subsection 19A(8) of the Land Rights Act and substitutes new subsections 19A(8) and (8A), which provide for the transfer of a lease granted under section 19A. New subsection 19A(8) provides that such a lease may be transferred with the written approval of the Minister in accordance with the terms and conditions of the lease. The subsection provides that an approval is not a legislative instrument. This is to assist readers as the approval is not a legislative instrument within the meaning of the Legislative Instruments Act. Therefore, the provision is merely declaratory of the law.

New subsection 19(8A) provides that the Commonwealth or a Commonwealth authority is authorised to acquire or transfer a section 19A lease. This provision, in conjunction with existing section 3C, means that the *Lands Acquisition Act 1989* does not apply to such acquisitions or disposals (see paragraphs 21(1)(c) and 117(1)(c) of that Act).

Item 3 inserts new subsections 19A(16), (17) and (18) into the Land Rights Act. New subsection 19A(16) provides that the Commonwealth or a Commonwealth authority is authorised to acquire a section 19A lease, or grant a sublease of a section 19A lease in accordance with the terms of the lease. This provision, in conjunction with existing section 3C, means that the *Lands Acquisition Act 1989* does not apply to such acquisitions or grants (see paragraphs 21(1)(c) and 117(1)(c) of that Act).

New subsection 19A(17) clarifies that a licence can be granted in relation to land covered by a section 19A lease. New subsection 19(18) provides that the Commonwealth or a Commonwealth authority is authorised to acquire a licence in relation to land covered by a section 19A lease, or grant a licence in relation to land covered by a section 19A lease in accordance with the terms of the lease. This provision, in conjunction with existing section 3C, means that the *Lands Acquisition Act 1989* does not apply to such acquisitions or grants (see paragraphs 21(1)(c) and 117(1)(c) of that Act).

Item 4 repeals and substitutes paragraph 70(2C)(a) of the Land Rights Act to extend the defence in relation to entering or remaining on Aboriginal land that is covered by a section 19A lease to land that is leased to the Commonwealth under section 31 of what will be the *Northern Territory National Emergency Response Act 2007*.

Item 5 repeals and substitutes subsection 70(8) of the Land Rights Act (which has been inserted by **item 2** of **Schedule 3**) and provides that, for the purposes of section 70, estate or interest in land includes certain types of licences and the statutory rights that a person has or may exercise under new Part IIB.

Item 6 repeals and substitutes subsection 71(3) of the Land Rights Act and provides that, for the purposes of section 71, estate or interest in land includes certain types of licences and the statutory rights that a person has or may exercise under new Part IIB.

Item 7 inserts words into subsection 34(1) of the *Northern Territory National Emergency Response Act 2007* to provide that, where the Commonwealth has a lease under section 31 of that Act, the Commonwealth's exclusive possession and right to quiet enjoyment is subject to the access rights provided by new subsections 70C to 70G of the Land Rights Act.