

## **Provisions that arguably breach the *Racial Discrimination Act 1975 (Cth) (RDA)***

Of the 5 major bills examined by the Senate Committee on Legal and Constitutional Affairs (SLLCA), 3 suspend the operation of Part II of the Racial Discrimination Act:

1. *Northern Territory National Emergency Response Bill 2007 (Cth) s 132(2)*
2. *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (Cth) ss 4, 6*
3. *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (Cth) s 4(2)*

Part II of the RDA prohibits racial discrimination in, amongst other things, rights to equality before the law, access to places and facilities, land, housing and other accommodation and provision of goods and services.

### ***Northern Territory National Emergency Response Bill 2007 (Cth)***

- In creating a 5-year lease for the Commonwealth over specified Aboriginal land, native title rights and interests are not protected as an existing right, title or other interest under the Bill: ss 34(2), 51. This means that native title is effectively extinguished during the term of the compulsorily acquired leases.
- The owner of the land, i.e. the land trust, cannot vary or terminate a Commonwealth compulsory lease: s 35(4). As a result, Aboriginal people have no avenue to terminate the lease if the Commonwealth is in breach of its lease (i.e. doesn't pay the proscribed rent). The discretion to terminate is entirely with the Commonwealth: s 35(7).
- Town camps under either the Special Purposes Leases Act or Crown Lands Act have a reduced notice period for lease resumption from 6 months to 2 months: ss 44, 45. This is less favourable treatment than other special purpose leases.
- The safeguards under the *Land Acquisition Act 1989 (Cth)* are excluded from the operation of the Bill: s 50(2).
- All specified acts taken are not subject to the standards of the *Native Title Act 1993 (Cth)* but, rather, suppress native title to the extent of any inconsistency.
- In determining the granting and/or conditions of bail, and determining the sentence to be passed, the bail authority or court must not take into consideration any form of customary law or cultural practice in judging criminal behaviour: ss 90, 91.

### ***Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (Cth)***

The Commonwealth and the Queensland Commission will have the power to regulate in whole or in part expenditure of income received through social security payments for 5 groups of people:

1. A person who was physically present overnight in a relevant NT area. A relevant NT area is defined as a those areas described in the *NT National Emergency Response Bill 2007 (Cth)* as well as Finke and Kalkarindji: s 123UB

2. A person who a child protection officer of a State or Territory requires be the subject of the regime: s 123UC
3. A person, or the person's partner, who has a child that does not meet school enrolment requirements: s 123UD
4. A person, or the person's partner, has a child who has unsatisfactory school attendance: s 123UD
5. A person who the Queensland Commission (yet to be established) requires to be the subject of the regime: s 123UF.

A majority of these categories will inevitably be constituted in the main by Indigenous people. However, the first category is the most obviously prone to racial discrimination because the communities included as relevant NT areas are Aboriginal.

Welfare payments included are wide-ranging and cover almost all welfare payments in a number of categories: s 123TC (Definitions). These include:

- Social security benefits
- Social security pensions
- Payments under ABSTUDY
- Service pensions
- Income support supplements
- Defence force income support allowance

Under Division 5 of the Bill, the Commonwealth must deduct between 50-100% of a person's welfare payments and place it into an Income Management Special Account in the person's name.

Division 6 of the Bill provides for the Secretary to within a reasonable period take appropriate action to meet a priority need of the person, their partner, their children or any other dependents once aware of the priority need. This may be in the form of vouchers for a specified amount or stored value cards.

Priority needs are defined as various essential items such as food, clothing and health needs, household utilities, child care and education, rent, funerals, automobile costs: s 123 TH. Excluded goods and services are alcohol (defined as 1%), tobacco, pornography, gambling and other goods and services specified by the Minister in a legislative instrument: s 123 TI.

To any extent that this lessens the rights of Aboriginal people against the general public, which it could be argued includes the entire scheme, it would be a breach of the RDA.

***Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (Cth)***

- The Aboriginal Land Rights (NT) Act will be amended to give the Commonwealth, a Commonwealth authority, the NT or an NT authority, statutory rights over buildings and infrastructure constructed or upgraded on Aboriginal land, where they have funded the construction or upgrade: Schedule 3.