2008-2009

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT
(WELFARE REFORM AND REINSTATEMENT OF RACIAL
DISCRIMINATION ACT) BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Families, Housing, Community Services and
Indigenous Affairs, the Hon Jenny Macklin MP)
This bill will amend several Acts relating to the income management arrangements under the social security law and the Northern Territory Emergency Response (the NTER). The bill provides the basis for a national welfare reform initiative aimed at supporting disengaged and vulnerable welfare recipients in the most disadvantaged locations across Australia.

This bill follows a 2008 review of the emergency response and extensive consultations undertaken in 2009 with Indigenous people in the Northern Territory. These consultations took place across all 73 communities affected by the NTER, as well as several other Northern Territory communities and town camps. Over 500 meetings were held in communities involving several thousand people, and there were 11 workshops in which regional leaders and other stakeholders were able to discuss issues in greater detail. Over 270 people participated in the regional and stakeholder workshops.

The core measures of the NTER are retained. Several of the measures are redesigned so they are improved and strengthened, are sustainable in the long-term, and are more clearly special measures or non-discriminatory within the terms of the Racial Discrimination Act 1975. In addition, the bill will repeal the provisions that limit the application of the Racial Discrimination Act 1975 and State and Territory anti-discrimination laws in relation to the NTER and associated measures.

The new scheme of income management will commence across the Northern Territory – in urban, regional and remote areas – as a first step in a future national roll out of income management to disadvantaged regions.

The operation of the new scheme of income management in the Northern Territory will be carefully evaluated. The first evaluation progress report is expected in 2011/12. The other income management trials currently underway in Western Australia and Queensland will also continue to be evaluated. Future roll out elsewhere in Australia will be informed by the evidence gained from this evaluation activity. Future implementation will also be informed by other criteria including evidence of disadvantage in Australia and consideration of where income management could benefit individuals and families.
Repeal of laws limiting anti-discrimination laws

A key feature of the bill is the repeal of existing provisions in certain Commonwealth Acts that modify the application of:

- the *Racial Discrimination Act 1975*, in relation to the NTER, the Queensland Family Responsibilities Commission and the income management arrangements as they relate to the Commission, and approved programs of work for income support;

- Northern Territory anti-discrimination laws in relation to the NTER and approved programs of work for income support; and

- Queensland anti-discrimination laws in relation to the Queensland Family Responsibilities Commission and the income management arrangements as they relate to the Commission.

Income management regime

The bill will establish a new model of income management to be used in selected locations throughout Australia, in relation to people who meet objective criteria independent of their race or ethnicity. The scheme is intended to operate as a tool to support disengaged youth and vulnerable individuals, particularly women and children. The existing income management measure that applies only in prescribed areas in the Northern Territory will be repealed by this bill. Three new income management measures will be introduced to apply to disengaged youth, long-term welfare payment recipients and persons assessed as vulnerable. These groups have been chosen based on their need for support due to their high risk of social isolation and disengagement, poor financial literacy, and participation in risky behaviours. Welfare recipients referred for income management by child protection authorities will also be included in the new scheme (under existing legislation). Under existing legislation, as amended by this bill, provision will also be made for welfare recipients not included in the relevant categories to voluntarily opt-in to income management. Financial incentives will be available to those who do so. There is also provision for a matched savings incentive to assist those on compulsory income management to improve their financial literacy.

The new scheme of income management will commence across the Northern Territory – in urban, regional and remote areas – as a first step in a future national roll out of income management to disadvantaged regions.
**Alcohol**

The bill amends the NTER alcohol measures so that, instead of being a blanket set of restrictions applying across predominantly Indigenous areas of the Northern Territory, community restrictions are able to be tailored to the circumstances of each area following consideration, on a case-by-case basis, of evidence about alcohol-related harm in each community, community consultation about the effectiveness of restrictions, and consideration of whether alternative restrictions, including alcohol management plans, are appropriate for communities.

**Prohibited material**

The Government will continue the existing restrictions on prohibited material in the prescribed areas of the Northern Territory. Where requested by, or on behalf of, people ordinarily resident in a prescribed area, the Minister may remove existing restrictions on the possession and supply of prohibited pornographic and very violent material. Before making a declaration to remove restrictions, the Minister or delegate must have regard to evidence about the well-being of, and the views of, the people living in the prescribed area. Residents of the prescribed area will be consulted before a declaration is made that the NTER restrictions will no longer apply to the prescribed area.

**Acquisition of rights, titles and interests in land**

The bill amends the provisions governing the five-year leases that have been compulsorily acquired over certain Northern Territory communities, to confirm the beneficial intent of the leases. New provisions will make improvements, such as defining the permitted use of the leases, stipulating the objectives of the leases, requiring the Minister to make guidelines governing land use approval processes, and enshrining in legislation the intended transition to voluntary leases.

**Licensing of community stores**

The bill amends the existing community stores licensing scheme to extend, improve and clarify the operation of that scheme. The amendments include: extending the scope of the licensing scheme to cover shops which are a key source of food, drink and grocery items for an Indigenous community; modifying the range of 'assessable matters' which form the basis for the assessment of community stores in relation to licensing decisions; ensuring that the legislative scheme reflects the specific responsibilities of store owners and store managers in the operation of a community store; and including provision for the Secretary to require a store owner that is an Indigenous association incorporated under the Northern Territory Associations Act to become registered under the Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006.
Amendments will also allow applications to be made to the Administrative Appeals Tribunal for the review of certain decisions made under the community stores licensing scheme, and remove the Commonwealth’s powers to acquire the assets and liabilities of a community store.

**Powers of Australian Crime Commission**

The bill makes an amendment to the *Australian Crime Commission Act 2002* to ensure that the Australian Crime Commission’s use of its special powers is in relation to violence and child abuse committed against Indigenous victims.

**Financial impact statement**

*Income management*

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<th>Total resourcing – all portfolios</th>
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<td>2009-10</td>
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The financial impact of the remainder of the bill is nil.
NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, as the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2009.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Act.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

Clause 4 provides that the Governor-General may make regulations prescribing matters of a transitional nature (including any saving or application provisions) relating to the amendments and repeals made by the Act.

This explanatory memorandum uses the following abbreviations:

- ‘Acts Interpretation Act’ means the Acts Interpretation Act 1901;
- ‘FaCSIA NTNER and Other Measures Act’ means the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007;
- ‘Legislative Instruments Act’ means the Legislative Instruments Act 2003;
- ‘Little Children are Sacred Report’ means the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, released in 2007 and titled ‘Ampe Akelyernemane Meke Mekarle: Little Children are Sacred’;
- ‘NTER’ means the Northern Territory Emergency Response;
- ‘NTNER Act’ means the Northern Territory National Emergency Response Act 2007;
- ‘NTER Redesign Consultations’ means the consultations conducted by the Government between June and August 2009 on the proposals set out in the Future Directions Discussion Paper and documented in the NTER Redesign Consultation Report;


- ‘NTER Review Board’ means the Board that was established in 2008 to conduct an independent and transparent review of the NTER;


- ‘Racial Discrimination Act’ means the Racial Discrimination Act 1975;

Schedule 1 – Repeal of laws limiting anti-discrimination laws

Summary
This Schedule repeals existing provisions in certain Commonwealth Acts that modify the application of:

- the Racial Discrimination Act, in relation to: the NTER; the Queensland Family Responsibilities Commission and the income management arrangements under the social security law as they relate to the Commission; and approved programs of work for income support;

- Northern Territory anti-discrimination laws in relation to the NTER and approved programs of work for income support; and

- Queensland anti-discrimination laws in relation to the Queensland Family Responsibilities Commission and the income management arrangements as they relate to the Commission.

Background
The NTER was announced in June 2007 as a suite of measures. A package of legislation, which comprised the NTNER Act, the FaCSIA NTNER and Other Measures Act and the Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (the Welfare Payment Reform Act), and which gave effect to the various NTER measures that required legislative change, commenced in August 2007.

The original package of legislation included provisions that modified the application of the Racial Discrimination Act and certain State and Territory anti-discrimination laws in relation to: the NTER; the body referred to in the Welfare Payment Reform Act as the ‘Queensland Commission’; the income management arrangements established under Part 3B of the Social Security Administration Act as they relate to the Queensland Commission; and approved programs of work for income support. (The Queensland Family Responsibilities Commission was subsequently declared to be the Queensland Commission for the purposes of the relevant provisions of the Welfare Payment Reform Act and the Social Security Administration Act.)

At the time, the previous Government stated that an important purpose of these provisions was to ensure that the NTER measures, as well as the establishment and operation of the Queensland Commission and changes to approved programs of work for income support, could be implemented without delay and without uncertainty.
The Explanatory Memorandum to the Northern Territory National Emergency Response Bill 2007 explained:

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 the basis of 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.

The Explanatory Memoranda to the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 and the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 included substantially similar statements.

The current Government, when in Opposition, said during the Parliamentary debate on these bills in 2007 that these provisions were unnecessary. When it was elected in November 2007, the current Government said it would continue the NTER and would review it after 12 months of operation.

The NTER Review Board reported to the Government in October 2008. The board found the situation in remote Northern Territory communities and town camps remained sufficiently acute to be described as a ‘national emergency’.

The Board made three overarching recommendations, including a recommendation that Government actions affecting Aboriginal communities respect Australia’s human rights obligations and conform with the Racial Discrimination Act.

The Government said on 23 October 2008 that it accepted each of the Board’s three overarching recommendations, and committed to introducing legislation into the Parliament to remove the provisions that exclude the operation of the Racial Discrimination Act.

The other Schedules to this bill contain amendments to the existing NTER legislation. The Government intends a number of the measures dealt with by this bill to be special measures under the Racial Discrimination Act.
Special measures are measures that help people of a particular race to enjoy their human rights equally with others. The concept of special measures in the Racial Discrimination Act comes from the Convention on the Elimination of All Forms of Racial Discrimination. Special measures are an important part of the Racial Discrimination Act because they allow a Government, when it is necessary, to make special laws to give effect to its obligation to protect the people who need it most.

The Government has issued a report (the NTER Redesign Consultation Report) on the NTER Redesign Consultations, which were undertaken in the development of this legislation, and a Statement (the NTER Redesign Statement) that announced the Government’s approach to each measure that has been redesigned. The Statement and the Report contain further material that is important in relation to these special measures.

The Government understands the important decisions that need to be made before introducing special measures. The Government has given careful consideration to the need for these laws as a necessary and appropriate way to address the problems affecting Indigenous people in the Northern Territory. These laws will underpin the sustainable, long-term development phase of the NTER.

The amendments made by this Schedule give effect to the Government’s commitment to remove the suspension of the Racial Discrimination Act and other State and Territory anti-discrimination laws.

The amendments made by this Schedule commence at the end of 31 December 2010.

**Explanation of the changes**

**Item 1** repeals sections 4 and 5 of the FaCSIA NTNER and Other Measures Act.

The FaCSIA NTNER and Other Measures Act amended a number of Acts to give effect to NTER measures to:

- ban the possession and supply of sexually explicit and very violent films, publications and computer games;
- amend Commonwealth law enforcement legislation to facilitate the NTER measures;
- allow the Commonwealth and its authorities and the Northern Territory and its authorities to retain an interest in government-funded buildings and infrastructure on Aboriginal land;
• change the laws governing access to Aboriginal land; and
• make other minor amendments to the Aboriginal Land Rights (Northern Territory) Act 1976.

Sections 4 and 5 of the FaCSIA NTNER and Other Measures Act cover all of the provisions of that Act and acts done under or for the purposes of those provisions. Sections 4 and 5 of the FaCSIA NTNER and Other Measures Act provided that:

• the provisions of that Act, and acts done under or for the purposes of those provisions, are special measures under the Racial Discrimination Act;
• the provisions of that Act, and acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the Racial Discrimination Act;
• the provisions of that Act are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as it would otherwise apply; and
• acts done under or for the purposes of the provisions of that Act have effect despite any law of the Northern Territory that deals with discrimination.

The effect of the repeal is that Part II of the Racial Discrimination Act, and Northern Territory anti-discrimination laws, are no longer excluded in relation to those provisions and acts.

The repeal of subsection 4(1) of the FaCSIA NTNER and Other Measures Act does not alter the fact that the provisions of that Act, and acts done under or for the purposes of those provisions, are intended to be special measures under the Racial Discrimination Act.

Item 2 repeals sections 132 and 133 of the NTNER Act.

The NTNER Act was the new principal legislation underpinning the then Australian Government’s response to the situation detailed in the Little Children are Sacred Report, in which child abuse and the neglect of children had been reported.

The NTNER Act gave effect to key NTER measures including to:

• modify the Northern Territory Liquor Act to give effect to restrictions on the possession, consumption, sale and transportation of liquor in prescribed areas;
• introduce a scheme of accountability intended to prevent, and detect, misuse of publicly-funded computers located in the prescribed areas;
• acquire five-year leases over certain Aboriginal townships in the Northern Territory;

• provide the Australian Government with powers intended to assist the Government to allocate flexibly resources, including government funds and the assets used to provide services in business management areas, and, where required, effectively address the performance of those entities required to deliver those services; and

• introduce a scheme for licensing community stores in Indigenous communities.

Sections 132 and 133 of the NTNER Act cover all of the provisions of that Act and acts done under or for the purposes of those provisions. Sections 132 and 133 of the NTNER Act provided that:

• the provisions of that Act, and acts done under or for the purposes of those provisions, are special measures under the Racial Discrimination Act;

• the provisions of that Act, and acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the Racial Discrimination Act;

• the provisions of that Act are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as it would otherwise apply; and

• acts done under or for the purposes of the provisions of that Act have effect despite any law of the Northern Territory that deals with discrimination.

The effect of the repeal is that Part II of the Racial Discrimination Act and Northern Territory anti-discrimination laws are no longer excluded in relation to those provisions and acts.

The repeal of subsection 132(1) of the NTNER Act does not alter the fact that the provisions of the NTNER Act, and acts done under or for the purposes of those provisions, are intended to be special measures under the Racial Discrimination Act.

**Item 3** repeals sections 4, 5, 6 and 7 of the Welfare Payment Reform Act. Those provisions, broadly speaking, relate to the income management arrangements, the Queensland Family Responsibilities Commission, and approved programs of work.
Queensland Family Responsibilities Commission

The Queensland Family Responsibilities Commission was established by the Queensland *Family Responsibilities Commission Act 2008* (the FRC Act) and underpins the Cape York welfare reform trial. The welfare reform trial was established through the co-operation of the Commonwealth and Queensland governments, in partnership with the Cape York Institute for Policy and Leadership, and after formal requests from some Cape York communities.

The objectives of the Commission and the Cape York welfare reform trial are to support the restoration of socially responsible standards of behaviour and local authority in the welfare reform communities and to help the members of those communities to resume primary responsibility for the wellbeing of individuals and families in the communities and the communities as a whole.

The Commission has the ability to intervene when the Commission is notified that a welfare recipient in a relevant welfare reform community is in conflict with certain State laws (for example, child protection laws). The Commission has a range of powers under the FRC Act that it can draw on to address issues identified through a conference process that involves the welfare recipient, the Commissioner, and local commissioners (respected leaders and Elders from the person’s community). The Commission’s powers include the power to direct the person to attend support services, and the power to require that the person be subject to income management under the Social Security Administration Act.

The Queensland Family Responsibilities Commission and the Cape York welfare reform trial are intended to be special measures under the Racial Discrimination Act and are time-limited under the FRC Act.

In relation to the Commission, sections 4 and 5 of the Welfare Payment Reform Act cover the provisions of the Social Security Administration Act and the FRC Act that give effect to the Commission, as well as acts done under or for the purposes of those provisions or for the purposes of income management, including the establishment and operations of the Commission.

Sections 4 and 5 provide that those provisions and acts are special measures and are excluded from the operation of Part II of the Racial Discrimination Act, and that those provisions apply to the exclusion of, and those acts have effect despite, any Queensland law dealing with discrimination.

The effect of the repeal done by item 3, in relation to the Queensland Family Responsibilities Commission, is that the Racial Discrimination Act and Queensland anti-discrimination law are no longer excluded in relation to the operation of the Commission or the operation of the income management arrangements under the Social Security Administration Act as they relate to the Commission.
The repeal of subsection 4(2) of the Welfare Payment Reform Act does not alter the fact that the provisions and acts covered by that subsection are intended to be special measures under the Racial Discrimination Act.

**Income management arrangements**

The Welfare Payment Reform Act also established income management arrangements that apply in respect of people on certain welfare payments in the Northern Territory, as well as a national income management scheme that could operate in specified areas in relation to a person who is in receipt of welfare payments and whose child is not enrolled at school, or fails to attend school adequately.

In relation to the welfare reforms implemented under the NTER, sections 4 and 5 of the Welfare Payment Reform Act cover the provisions of the Social Security Administration Act that provide for these income management measures, and acts done under or for the purposes of those provisions. Sections 4 and 5 provided that:

- the provisions of that Act, and acts done under or for the purposes of those provisions, are special measures under the Racial Discrimination Act;
- the provisions of that Act, and acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the Racial Discrimination Act;
- the provisions of that Act are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as it would otherwise apply; and
- acts done under or for the purposes of the provisions of that Act have effect despite any law of the Northern Territory that deals with discrimination.

The effect of the repeal is that Part II of the Racial Discrimination Act and Northern Territory anti-discrimination laws are no longer excluded in relation to those provisions and acts.

The repeal of subsections 4(2) and 6(2) of the Welfare Payment Reform Act does not alter the fact that the provisions and acts covered by those provisions are intended to be special measures under the Racial Discrimination Act.

Schedule 2 to this bill operates to repeal the income management measure that applies in respect of people on certain welfare payments in prescribed areas in the Northern Territory.
Approved programs of work

Sections 6 and 7 of the Welfare Payment Reform Act cover the implementation of guidelines, or the doing of any other acts, for the purpose of determining the terms of a relevant activity agreement in relation to an approved program of work for income support payment done during the period of the NTER. Sections 6 and 7 provided that:

- any such implementation, or other acts, are special measures under the Racial Discrimination Act;
- any such implementation, or other acts, are excluded from the operation of Part II of the Racial Discrimination Act; and
- any such implementation, or other acts, have effect despite any law of the Northern Territory that deals with discrimination.

The effect of the repeal done by item 3 is that the Racial Discrimination Act and Northern Territory laws dealing with discrimination are no longer excluded in relation to such implementation or other acts.

Item 4 confirms that:

- the repeals done by items 1 to 3 do not have retrospective effect; and
- section 8 of the Acts Interpretation Act applies in relation to the repeals, unaffected by any contrary intention.

Section 8 of the Acts Interpretation Act provides generally for the effect of repeals, and operates except where there is a contrary intention. In relation to the repeals done by this Schedule, there is no contrary intention. The repeal of these provisions does not affect the previous operation of the Acts, nor any right acquired under those Acts.
Schedule 2 – Income management regime

Summary

This Schedule introduces new provisions into Part 3B of the Social Security Administration Act to establish a new model of income management to be used in selected locations throughout Australia, in relation to people who meet objective criteria independent of their race or ethnicity. The scheme is intended to operate as a tool to support disengaged youth and vulnerable individuals, particularly women and children. Three new income management measures will be introduced to apply to disengaged youth, long-term welfare payment recipients and persons assessed as vulnerable. These groups have been chosen based on their need for support due to their high risk of social isolation and disengagement, poor financial literacy, and participation in risky behaviours. Under the existing provisions of Part 3B, welfare recipients referred for income management by child protection authorities will also be included in the new scheme. Provision is also made for welfare recipients not included in the relevant categories to voluntarily opt-in to income management. Financial incentives will be available to those who do so. There is also provision for a matched savings incentive to assist those on compulsory income management to improve their financial literacy.

The new scheme of income management will commence across the Northern Territory – in urban, regional and remote areas – as a first step in a future national roll out of income management to disadvantaged regions.

Background

On 21 June 2007, in response to the Little Children are Sacred Report, the Australian Government announced a number of measures to address the national emergency confronting the welfare of Aboriginal children in the Northern Territory. The income management arrangements formed one of these measures. The income management arrangements had two primary aims: to stem the flow of cash that is expended on substance abuse and gambling; and to ensure that funds provided for the welfare of children are directed towards meeting their priority needs, such as food, clothing, medicine and basic household goods.

On 21 May 2009, this Government released the Future Directions Discussion Paper, which outlined two options for continuing income management. The options outlined in the Discussion Paper provided a starting point for discussions during the NTER Redesign Consultations. Participants in these consultations were not limited to providing feedback on the options outlined in the Discussion Paper, and the Government indicated that it would listen to all of the ideas and proposals put forward during the consultation process.
While the NTER Redesign Consultations revealed a wide variety of views about income management, they showed that many people believe it is delivering real benefits, such as: increased spending on food; more savings for larger purchases such as whitegoods; less money being spent on alcohol, gambling, cigarettes and drugs; reduced levels of harassment for money (‘humbugging’); and improved capacity for household budgeting.

Positive outcomes from income management were also identified in a recent evaluation of income management compiled by the Australian Institute of Health and Welfare (AIHW) and the 2008 CIRCA survey for the Central Land Council. The main benefits noted in these reports were an increase in the amount of money spent on food, and an increase in the amount of food children were eating. There were advantages for mothers with small children and large families, for grandparents and for communities. People also felt that humbugging had been reduced.

The AIHW report found that there was a growing acceptance of income management, but both of these reports, and the NTER Redesign Consultation Report, said that people had felt hurt and ashamed by the way income management was introduced, with little consultation, and they did not understand why it only applied to Aboriginal people.

The preliminary results on the use of income management in the current welfare payment reform trials in Western Australia and Cape York suggests that income management is also an effective tool in urban, regional and remote areas to:

- reduce levels of deprivation and hardship;
- promote personal and parental responsibility; and
- provide security for people in relation to their decisions about how their welfare payments will be spent.

Based on all the feedback received as part of the NTER Redesign Consultations, and the other evidence about the way in which income management is working, the Government believes that income management is an effective tool in a range of locations and circumstances to assist disengaged and vulnerable welfare payment recipients, regardless of their race. It can also provide the foundations for pathways to economic and social participation through helping to stabilise household budgeting.

The new scheme of income management will commence across the Northern Territory – in urban, regional and remote areas – as a first step in a future national roll out of income management to disadvantaged regions.
The operation of the new scheme of income management in the Northern Territory will be carefully evaluated. The first evaluation progress report is expected in 2011/12. The other income management trials currently underway in Western Australia and Queensland will also continue to be evaluated. Future roll out elsewhere in Australia will be informed by the evidence gained from this evaluation activity. Future implementation will also be informed by other criteria including evidence of disadvantage in Australia and consideration of where income management could benefit individuals and families.

**Categories of welfare payment recipients in scope**

The categories of welfare payment recipients covered by the redesigned model of income management are, in general terms:

- people aged 15 to 24 who have been in receipt of youth allowance, newstart allowance, special benefit or parenting payment for more than 13 weeks in the last 26 weeks (disengaged youth);

- people aged 25 and above (and younger than age pension age) who have been in receipt of youth allowance, newstart allowance, special benefit or parenting payment for more than 52 weeks in the last 104 weeks (long-term welfare payment recipients); and

- people assessed by a delegate of the Secretary (in practice, a Centrelink social worker) as requiring income management for reasons including vulnerability to financial crisis, domestic violence or economic abuse.

The current measure that enables child protection authorities to refer people to Centrelink for income management in certain locations within Western Australia will also be extended to cover the Northern Territory. This change does not require new provisions to be introduced into the Social Security Administration Act.

The categories of welfare payment recipients were chosen based on evidence that indicates a range of negative outcomes for people with early or long-term dependence on income support payments, including poor social and health outcomes and financial vulnerability, as well as the risks of long-term exclusion and the intergenerational transmission of welfare dependency. Children growing up in these circumstances are also at high risk of poor outcomes.

In addition, people can choose to voluntarily opt-in to the income management arrangements.

Income management will provide a tool to create more positive conditions in families, by helping people to use their income support payments responsibly and save for the future.
Exemptions from income management

For people subject to income management under the disengaged youth and long-term welfare payment recipient categories, new provisions will provide for exemptions from income management based on the demonstration of socially responsible behaviour. For people without dependent children, the exemption criteria are related, in general terms, to evidence being provided of engagement in study or a sustained pattern of employment. For those with dependent children, the exemption criteria are related to the provision of evidence of responsible parenting. These exemptions are intended to ensure that the new measures are narrowly targeted to support the most vulnerable and disengaged people, and encourage those on welfare payments to develop the skills and capabilities to engage in productive and social activities as parents, students or employees.

Incentive payments

A new payment will be introduced to encourage people to enter into, and remain subject to (for at least 26 weeks) voluntary income management agreements. A matched savings scheme payment will also be established and will be payable to people who are subject to compulsory income management, and who undertake an approved financial management or money management course and accumulate savings. This is designed to assist those on compulsory income management to improve their financial literacy and to encourage saving.

Transitional arrangements

As a consequence of these changes, people subject to the current comprehensive scheme of income management in the Northern Territory will either transition to the new income management scheme or move off income management altogether, within 12 months of the commencement of this Schedule. There will be a staged transition process, and people will be able to transition to the new scheme, or seek to exit from the existing scheme, once the new scheme is operational in their area.

The amendments made by this Schedule commence on 1 July 2010.
**Explanation of the changes**

**Part 1 – Relevant Northern Territory area**

Division 1 – Amendments

As a result of the amendments made by the items contained in this Division, it will no longer be possible, subject to the savings provisions in Division 2 of this Part, for a person to become subject to income management under section 123UB (referred to below as ‘the old NT measure’). That is, a person will not become subject to income management, after the commencement of this Schedule, as a result of, among other things, being physically present overnight in a ‘declared relevant Northern Territory area’.

**Items 1 to 6** repeal the definitions for a number of categories of ‘welfare payments’, which are currently contained in section 123TC of the Social Security Administration Act. The repeal of these definitions is necessary because these categories of welfare payments are only relevant to people who are subject to income management under the old NT measure.

**Items 7 and 9** repeal the definitions of ‘declared relevant Northern Territory area’ and ‘relevant Northern Territory area’ from section 123TC of the Social Security Administration Act. These definitions are only relevant to people who are subject to income management under the old NT measure.

**Item 8** repeals the definition of ‘exempt Northern Territory person’, which is no longer required because of the repeal of the old NT measure. As a result of the repeal of this measure, it is no longer necessary to provide for exemptions from it.

**Item 10** is a further amendment consequential on the repeal of section 123UB, which removes the reference to section 123UB from the definition of ‘subject to the income management regime’.

**Item 11** repeals sections 123TD and 123TE, which are provisions that establish which areas are ‘relevant Northern Territory areas’ and empower the Minister to determine specified areas to be ‘declared relevant Northern Territory areas’ for the purposes of the old NT measure. These provisions are relevant only to the old NT measure, which is repealed by **item 12**.

**Item 12** repeals section 123UB. As a result of the repeal of this provision, a person will not become subject to income management under the old NT measure, after the commencement of this Schedule, as a result of, among other things, being physically present overnight in a ‘declared relevant Northern Territory area’. (Division 2 establishes saving and transitional provisions that apply to people who are subject to the old NT measure immediately before the commencement of this Schedule.)
Item 13 repeals existing Subdivision B of Division 2 of Part 3B of the Social Security Administration Act. That Subdivision contains section 123UG, which deals with the determination of certain people to be ‘exempt Northern Territory persons’. Due to the repeal of the old NT measure, this provision is no longer needed. An exemption under section 123UG can only be effective to exempt a person from being subject to income management under section 123UB (which is repealed by item 12).

Items 14 to 21 make a number of further amendments consequential upon the repeal of section 123UB.

Division 2 — Saving and transitional provisions

The amendments in this Division allow for people subject to income management under section 123UB, immediately before the commencement of this Schedule, to remain subject to income management under that provision, as continued, through a 12 month transition period. It is intended that, during the transition period, such people will either become subject to income management under the new scheme or move off income management altogether.

Item 22 sets out definitions for terms that are used in Division 2 of Schedule 2 to the bill.

Under this item, commencement time means the time at which Part 1 of Schedule 2 to this bill commences (1 July 2010).

The definition of the term transition period ensures that people who remain subject to income management after transition under the old NT measure (as saved by item 23) can remain subject to income management under that measure only for a maximum period of 12 months, from 1 July 2010.

Item 23 provides for the basis on which a person can remain subject to income management under the old NT measure during the transition period (the period of 12 months from 1 July 2010), until they have been transitioned to the new scheme or otherwise moved off the old NT measure.

The effect of this item is that a person who is subject to income management under section 123UB, as in effect immediately before its repeal by this bill, will remain subject to income management under Part 3B of Social Security Administration Act as if a number of the amendments made by Division 1 of this Part had not been made.
The person will remain subject to income management under this arrangement until: the person ceases to meet the criteria in former section 123UB (for example, if the person is no longer an eligible recipient of a category A welfare payment); the Secretary determines that the person should not continue to be subject to income management under former section 123UB (this determination can be in response to a direct request of the individual or through the planned transition process); or the person becomes subject to income management under another provision in Subdivision A of Division 2 of Part 3B of the Social Security Administration Act (including the new situations in which a person can be subject to income management, as inserted by this bill).

**Subitem 23(7)** limits the exercise of the Secretary’s power to determine, under paragraph 23(5)(b), that a person should not continue to be subject to income management during the transition period (the period of 12 months from 1 July 2010) to persons who live in ‘declared income management areas’. For a person who remains subject to income management because of the transitional rules, once the area in which they usually reside becomes a ‘declared income management area’, this provision means that the Secretary, or her or his delegate, has the ability to determine that they should not continue to be subject to income management.

**Subitem 23(8)** provides that a refusal of the Secretary (or delegate) to determine whether a person should not be subject to income management (under paragraph 5(b)) is to be treated as a decision of an officer under the social security law and is therefore subject to the review provisions in Part 4 of the Social Security Administration Act.

Item 23 also ensures that a determination that an area is a declared relevant Northern Territory area under section 123TE that is in force immediately before the commencement of Part 1 of Schedule 2 to this bill is to remain in force after the commencement of that Part. The item is intended to ensure that existing determinations can be extended or remade to support the smooth transition from the old NT measure to the new arrangements that will apply as a result of the amendments made by this bill. However, **subitem 23(3)** limits the making of new determinations to areas that are the subject of determinations under section 123TE that continue in force because of **subitem 23(2)**. In short, this means that, if the old NT measure does not operate in an area immediately before the commencement of this Part, it will not be able to operate in that area after the commencement of this Part.

**Subitem 23(6)** provides that a person who has not ceased to be subject to income management under these saved provisions before the end of the transition period will cease to be subject to income management at the end of that transition period. The only way a person in this situation will be able to be subject to income management again is if they satisfy one of the situations in which a person can be subject to income management in accordance with Division 2 of Part 3B of the Social Security Administration Act as in force after the commencement of the amendments made by this Schedule.
Item 24 is a consequential provision that deems any law of the Commonwealth which refers, on commencement of this Part, to Part 3B of the Social Security Administration Act or section 123UB of that Act to continue to have effect in relation to people who are subject to income management because of item 23. Once there are no more people subject to income management because of item 23 (which will be the case at the end of the transition period, or before), or once any laws of the Commonwealth affected by this item are repealed, this item will have no further effect.

Part 2 – New income management measures

Item 25 makes amendments to the simplified outline at the beginning of Part 3B of the Social Security Administration Act. The changes reflect the removal of the old NT measure by item 12 of this Schedule and the insertion of the three new situations which are the subject of this bill. The three new measures are referred to below as ‘the vulnerable welfare payment recipients measure’, ‘the disengaged youth measure’, and ‘the long-term welfare payment recipients measure’.

Item 26 makes a minor technical amendment to the simplified outline consequential upon the insertion of new paragraph 123TB(a) by item 27.

Item 27 repeals the current objects provision at the beginning of Part 3B of the Social Security Administration Act and inserts a new provision. The new provision lists a number of objects of the income management regime established by Part 3B of the Social Security Administration Act. The new objects of income management reflect that the measures are intended to be generally applicable and not to relate to, or target, directly or indirectly, a particular race (including Aboriginal people).

Item 28 inserts a definition of category E welfare payment into existing section 123TC of the Social Security Administration Act and lists a number of social security payments, each of which is a category E welfare payment: youth allowance; newstart allowance; special benefit; and parenting payment.

A person must be an eligible recipient of a category E welfare payment to be subject to income management under new section 123UCB, the disengaged youth measure, or new section 123UCC, the long-term welfare payment recipients measure.

Item 29 inserts a new defined term into section 123TC – declared income management area. This definition is required for new sections 123UCA, 123UCB and 123UCC (the vulnerable welfare payment recipients, disengaged youth and long-term welfare payment recipients measures) because one requirement of a person being subject to income management under those provisions is that their usual place of residence is in a declared income management area. The Minister is able, under new section 123TFA, to determine a declared income management area by legislative instrument.
Item 30 inserts a new defined term into section 123TC — **exempt welfare payment recipient**. This definition refers to the meaning given to this term in sections 123UGB, 123UGC and 123UGD (each of which provide for alternative ways in which a person can be an exempt welfare payment recipient).

Item 31 inserts a new defined term — **full-time student** — into section 123TC, which refers to section 123UGF, where the term is defined in detail.

Item 32 inserts a definition of **school age child** into section 123TC, by referring to section 123UGG, which defines this term in detail. It is relevant to the criteria for exempt welfare payment recipients who have dependent children (see new section 123UGD, which is inserted by item 37).

Item 33 is a consequential amendment to the existing definition of ‘subject to the income management regime’ that is required because new sections 123UCA, 123UCB and 123UCC (the vulnerable welfare payment recipients, disengaged youth and long-term welfare payment recipients measures) are further situations in which a person can be subject to income management.

Item 34 inserts a definition of **vulnerable welfare payment recipient** into section 123TC by referring to new section 123UGA, where the meaning of the term is defined in detail.

Item 35 inserts new section 123TFA. The new section empowers the Minister to determine, by legislative instrument, that a specified State, Territory or area (which could be larger or smaller than a whole State or Territory) is a ‘declared income management area’ for the purposes of Part 3B of the Social Security Administration Act. The concept of ‘declared income management area’ is relevant to the three new ways in which a person can be subject to the income management arrangements as a result of the changes made by this Schedule: under new sections 123UCA, 123UCB and 123UCC (the vulnerable welfare payment recipients measure, the disengaged youth measure and the long-term welfare payment recipients measure).

Item 36 inserts new sections 123UCA, 123UCB and 123UCC.

New section 123UCA provides for a new situation in which a person can be subject to income management (the vulnerable welfare payment recipient measure).
Under this new section, a person is subject to income management at a particular time (referred to as the ‘test time’) if: they are an eligible recipient (a term that is defined in section 123TK) of a category H welfare payment (as defined in section 123TC); their usual place of residence is within a declared income management area (as defined in new section 123TFA); they are a vulnerable welfare payment recipient in accordance with new section 123UGA; their payment nominee, if they have one, is not an ‘excluded payment nominee’ (as defined in section 123TC); and the person is not subject to income management under section 123UC (the child protection measure), section 123UD (the school enrolment measure), section 123UE (the school attendance measure) or section 123UF (the Queensland Commission measure) of the Social Security Administration Act.

Case study – vulnerable welfare payment recipients

David is a 49-year old man living in a declared income management area and is in receipt of disability support pension. He has no children. He has been assessed by a Centrelink social worker, who is a delegate of the Secretary, as being a vulnerable welfare payment recipient because he is vulnerable to economic abuse by his partner.

David will be subject to income management for 12 months (or potentially a shorter period, as specified by the social worker). He may ask the social worker to reconsider his circumstances (to decide whether he should continue to be subject to income management under this measure) during these 12 months. However, his circumstances cannot be reconsidered within 90 days of a previous request for reconsideration.

New section 123UCB, the disengaged youth measure, provides for a further new situation in which a person can be subject to income management.

Under this new provision, a person is subject to income management at a particular time (referred to as the ‘test time’) if: they are an eligible recipient (a term that is defined in section 123TK) of a category E welfare payment (a term that is inserted into section 123TC by item 28 of this bill); the person is at least 15 years old and not yet 25 years old; their usual place of residence is within a declared income management area (as defined in new section 123TFA); they are not an ‘exempt welfare payment recipient’ (in accordance with new sections 123UGB, 123UGC or 123UGD); their payment nominee, if they have one, is not an ‘excluded payment nominee’ (as defined in section 123TC); the person is not subject to income management under section 123UC (the child protection measure), section 123UCA (the vulnerable welfare payment recipients measure), section 123UD (the school enrolment measure), section 123UE (the school attendance measure) or section 123UF (the Queensland Commission measure) of the Social Security Administration Act; and, for at least 13 weeks in the 26 week period ending immediately before the test time the person was an eligible recipient of a category E welfare payment.
Case study – disengaged youth

Liz is the 22-year old mother of a six-month old baby, in receipt of parenting payment (single) and living in a declared income management area. She has not been studying or working in the last six months. Liz started receiving her pension when her child was born. Because she is under 25, she will become subject to income management once she has been in receipt of parenting payment (single) for more than thirteen weeks, unless she is an exempt welfare payment recipient.

New subsection 123UCB(2) provides a further rule for when a person is subject to income management under the long-term welfare recipients measure. It provides (along the same lines as existing subsection 123UF(3)) that a person is subject to income management under the disengaged youth measure at a particular time if the person is not otherwise subject to income management under any of the other income management measures in Subdivision A of Division 2 of Part 3B of the Social Security Administration Act (that is, the child protection, vulnerable welfare payment recipients, school enrolment, school attendance or long-term welfare payment recipients measures, the Queensland Commission measure, or voluntary income management) and the person has a payment nominee who is subject to income management under subsection 123UCB(1).

New section 123UCC provides for a further new way in which a person can be subject to income management (the long-term welfare payment recipient measure). Under this new provision, a person is subject to income management at a particular time (referred to as the ‘test time’) if: they are an eligible recipient (a term that is defined in section 123TK) of a category E welfare payment (as inserted into section 123TC by item 28 of this bill); the person is at least 25 years old and not yet pension age (as defined in subsections 23(5A), (5B), (5C) and (5D) of the Social Security Act 1991 (the Social Security Act)); their usual place of residence is within a declared income management area (as defined in new section 123TFA); they are not an ‘exempt welfare payment recipient’ (in accordance with new sections 123UGB, 123UGC or 123UGD); their payment nominee, if they have one, is not an ‘excluded payment nominee’ (as defined in section 123TC); the person is not subject to income management under section 123UC (the child protection measure), section 123UCA (the vulnerable welfare payment recipients measure), section 123UD (the school enrolment measure), section 123UE (the school attendance measure) or section 123UF (the Queensland Commission measure) of the Social Security Administration Act; and, for at least 52 weeks of the 104 week period ending immediately before the test time, the person was an eligible recipient of a category E welfare payment.
Case study – long term welfare payment recipients

Pat is a 45-year old man who has been in receipt of newstart allowance for seven years. His wife, Joy, is 35 and has been in receipt of parenting payment (partnered), and has not studied or worked, since the birth of her first child. Their children are now aged 6, 8 and 13. They live in a declared income management area.

As Pat has been in receipt of newstart allowance for more than 52 weeks in the preceding 104 weeks, he will be subject to income management unless he is an exempt welfare payment recipient. Joy will also be subject to income management, as she has been in receipt of parenting payment (partnered) for more than 52 weeks in the preceding 104 weeks, unless she also satisfies one of the exemption categories (under section 123UGB, 123UGC or 123UGD, as discussed below).

New subsection 123UCC(2) provides a further rule for when a person is subject to income management under the long-term welfare recipients measure. It provides (along the same lines as subsection 123UF(3)) that a person is subject to income management under this measure at a particular time if the person is not otherwise subject to income management under of the other measures in Subdivision A of Division 2 of Part 3B of the Social Security Administration Act (that is, child protection, vulnerable welfare payment recipients, school enrolment, school attendance and disengaged youth measures, the Queensland Commission measure or voluntary income management) and the person has a payment nominee who is subject to income management under subsection 123UCC(1).

Item 37 inserts new Subdivision BA into Division 2 of Part 3B of the Social Security Administration Act.

New section 123UGA of the new Subdivision empowers the Secretary to determine, in writing, that a person is a vulnerable welfare payment recipient. Such a determination is one of the requirements for a person to be subject to income management under new section 123UCA (paragraph (c)). In making a determination, the Secretary must comply with any decision-making principles made by the Minister under subsection 123UGA(2) that are in force from time to time. Principles made by the Minister for the purposes of this provision will be a legislative instrument. However, a determination that a person is a ‘vulnerable welfare payment recipient’ (which would be made on an individual basis) is not a legislative instrument (subsection 123UGA(11)). Subsection 123UGA(11) is merely declaratory of the law as the determination is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.
Subsection 123UGA(3) sets out when a determination that a person is a ‘vulnerable welfare payment recipient’ comes into force and how long it can remain in force. A determination is effective either on the day it is made (including where no commencement date is specified in the determination), or on a later date that may be specified in the determination. If a determination is not revoked earlier, it remains in force either for 12 months from the time it comes into force or, if a shorter period is specified in the determination, for that shorter period.

Subsection 123UGA(4) clarifies that the Secretary can make a new determination that a person is a ‘vulnerable welfare payment recipient’ even though the person may have been, or is still, subject to an earlier determination.

Subsections 123UGA(5) and (6) provide, consistent with subsection 33(3) of the Acts Interpretation Act, that the Secretary can vary or revoke a determination that a person is a ‘vulnerable welfare payment recipient’, either on her or his own initiative or on request (by a person subject to a determination) made under subsection 123UGA(8). Similar to the requirement in subsection 123UGA(2), the Secretary must comply with any decision-making principles set out in a legislative instrument when deciding whether to vary or revoke a determination. A variation or revocation will not be a legislative instrument, as the original determination which is being varied or revoked is not legislative.

Subsection 123UGA(7) is intended to avoid any possible inference that subsection 123UGA(5) limits the application of subsection 33(3) of the Acts Interpretation Act to other instruments made under the Social Security Administration Act. Subsection 33(3) provides that, where an Act confers a power to make, grant or issue any instrument (including a legislative instrument), the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Subsections 123UGA(8), (9) and (10) relate to requests by a person to the Secretary for reconsideration of a determination that they are a ‘vulnerable welfare payment recipient’. In addition to a person’s review rights under Part 4 of the Social Security Administration Act, these provisions give a person who has been determined to be a ‘vulnerable welfare payment recipient’ the power to request that the Secretary reconsider their circumstances, and either vary, revoke or decide not to change the determination that is in force in relation to the person. (It is not a rule about standing in the shoes of the original decision maker). Subsection (9) provides that a person cannot make a request for reconsideration within 90 days of a previous request for reconsideration.

In new Subdivision BB of Division 2 of Part 3B of the Social Security Administration Act, new sections 123UGB, 123UGC and 123UDG set out the circumstances in which a person is an ‘exempt welfare payment recipient’.
Where a person is determined to be an exempt welfare payment recipient, they cannot be subject to income management under either section 123UCB or section 123UCC (the disengaged youth or long-term welfare payment recipients measures), because of new paragraphs 123UCB(1)(d) and 123UCC(1)(d)).

There are three main circumstances in which the Secretary may determine that a person is an ‘exempt welfare payment recipient’.

The first main set of circumstances, under new section 123UGB, is where the Secretary is satisfied that the person is included in a class of persons specified in a legislative instrument made by the Minister.

In these circumstances, the Secretary may determine (in writing, consistent with the requirement in section 236 of the Social Security Administration Act) that the person is an exempt welfare payment recipient. The purpose of this section is to allow for exemptions to be available, from time to time, to groups of people with shared characteristics whom the Minister considers should be exempt from income management.

Subsection 123UGB(3) is merely declaratory of the law, as a determination about an individual made under subsection 123UGB(1) is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

The second main set of circumstances, under new section 123UGC, only relate to people without dependent children, or people with dependent children above school age (see subsection (4)). (The definition of child in section 123TC is expressed not to apply to Division 2 of Part 3B and therefore does not apply to section 123UGC.)

In these circumstances, the Secretary may determine (in writing, consistent with the requirement in section 236 of the Social Security Administration Act) that the person is an exempt welfare payment recipient if: the Secretary is satisfied that the person is a full-time student (as defined in section 123UGF) or a new apprentice (as defined in subsection 23(1) of the Social Security Act); or the Secretary is satisfied that the person worked for at least 26 weeks, during the preceding 12 months, on wages that were at or above the ‘relevant minimum wage’ (as defined in section 23 of the Social Security Act); or the Secretary is satisfied that the person is undertaking an activity that is specified in a legislative instrument made by the Minister. These activities may be specified by reference to a class of people undertaking the activities.

Subsection 123UGC(3) is merely declaratory of the law, as a determination about an individual made under subsection 123UGC(1) is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.
The third main set of circumstances, under section 123UGD, relates to people with dependent children who are school age or younger (see subsection 123UGD(7)). (The definition of *child* in section 123TC is expressed not to apply to Division 2 of Part 3B and therefore does not apply to section 123UGD.)

In these circumstance, the Secretary may determine (in writing, consistent with the requirement in section 236 of the Social Security Administration Act) that the person is an exempt welfare payment recipient if: the Secretary is satisfied that the requirements set out in the provision, as they apply in relation to each relevant dependent child of the person, are met; and, additionally, that there is no indication of ‘financial vulnerability’ in relation to the person in the preceding 12 months, which is to be determined, on a case by case basis, in accordance with decision-making principles made by the Minister, by legislative instrument, under subsection 123UGD(5).

The requirements that apply to a person in relation to each dependent school age child of a person are that the Secretary must be satisfied that, at the test time: the children are enrolled at and attend school without significant absences (no more than five unexplained absences in the each of the previous two school terms ending immediately before the test time); or they are covered by an alternative schooling arrangement (such as home schooling) and their schooling is progressing satisfactorily; or they are participating in an activity specified in a legislative instrument made by the Minister for the purposes of this provision.

The requirements that apply to a person in relation to each dependent child of the person who is younger than school age are that the Secretary must be satisfied that, at the test time, the person or the child is participating in the number and kind of activities that are specified in a legislative instrument made by the Minister for the purposes of this provision. The activities specified by the Minister for the purposes of this provision may relate to (but do not necessary have to relate to) a child’s intellectual, physical or social development.

Subsection 123UGD(6) is merely declaratory of the law, as a determination about an individual made under subsection 123UGD(1) is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Under new section 123UGE, for the purposes of sections 123UGC and 123UGD, a child can be a dependent child of only one person. The Secretary is obliged to choose which person, if there is any doubt. This means, for example, in the case of a couple who share care for a child, the Secretary must choose the member of the couple of whom the child is a dependent child. The definition of *child* in section 123TC is expressed not to apply to Division 2 of Part 3B and therefore does not apply to this section.
Section 123UGF provides a definition of **full-time student**, for the purposes of Part 3B of the Social Security Administration Act only. As a consequence of this definition, a person can only be a ‘full-time student’ for the purposes of new section 123UGC if they are in receipt of youth allowance and are meeting the activity test for that payment through ‘undertaking full-time study’ in accordance with section 541B of the Social Security Act.

Section 123UGG provides for two definitions relevant to school age children. A **school age child** is a child who, because of their age, is required to be enrolled at a school or attend school. The definitions of **attendance** and **enrolment** are designed to ensure a child who is covered by an alternative schooling arrangement (such as home-schooling) also meets the definition of ‘school age child’. The definition of **child** in section 123TC is expressed not to apply to Division 2 of Part 3B and therefore does not apply to this section.

**Items 38 to 41** make technical amendments consequential upon the insertion of new situations in which a person can be subject to income management (the new vulnerable welfare payment recipients, disengaged youth and long-term welfare payment recipients measures).

**Item 42** inserts new Subdivisions BA and BB into Division 5 of Part 3B of the Social Security Administration Act which provide for deductions from welfare payments that may be payable to a person who is subject to income management under new sections 123UCA, 123UCB and 123UCC (the vulnerable welfare payment recipients, disengaged youth and long-term welfare payment recipients measures).

Sections 123XJA, 123XJB, 123XJC and 123XJD are similar in operation to the other sections in Division 5 of Part 3B.

New section 123XJA provides that, if a person is subject to income management under section 123UCA (vulnerable welfare payment recipients measure) and an instalment of a category I welfare payment (as defined in existing section 123TC) is payable to the person, the Secretary must deduct 100 per cent of the net amount if the payment is baby bonus paid under the **A New Tax System (Family Assistance) Act 1999**, or 50 per cent of the net amount if the payment is another category I welfare payment, and credit the person’s income management account and the Special Account accordingly. The Minister may specify, by legislative instrument, another percentage (to a maximum of 100 percent), in which case that percentage must be deducted and credited in accordance with this section. For paragraph 123XJA(4)(b), the Minister may specify a higher percentage only to further the objects of Part 3B of the Administration Act.
New section 123XJB provides that, if a person is subject to income management under section 123UCA (vulnerable welfare payment recipients measure) and a category I welfare payment is payable to the person other than by instalments (that is, by lump sum), the Secretary must deduct 100 per cent of the net amount of that payment and credit the person’s income management account and the Special Account accordingly. The Minister may specify, by legislative instrument, a lower percentage, in which case that percentage must be deducted and credited in accordance with this section.

New section 123XJC provides that, if a person is subject to income management under either section 123UCB or section 123UCC (disengaged youth or long-term welfare payment recipients measures) and an instalment of a category I welfare payment is payable to the person, the Secretary must deduct 100 per cent of the net amount if the payment is baby bonus paid under the *A New Tax System (Family Assistance) Act 1999* or 50 per cent of the net amount if the payment is another category I welfare payment and credit the person’s income management account and the Special Account accordingly. The Minister may specify, by legislative instrument, another percentage (to a maximum of 100 percent), in which case that percentage must be deducted and credited in accordance with this section. For paragraph 123XJC(4)(b), the Minister may specify a higher percentage only to further the objects of Part 3B of the Administration Act.

New section 123XJD provides that, if a person is subject to income management under either section 123UCB or section 123UCC (disengaged youth or long-term welfare payment recipients measures) and payment of a category I welfare payment is payable to the person other than by instalments (that is, by lump sum), the Secretary must deduct 100 per cent of the net amount of that payment and credit the person’s income management account and the Special Account accordingly. The Minister may specify, by legislative instrument, a lower percentage, in which case that percentage must be deducted and credited in accordance with this section.

**Items 43, 44 and 45** make technical amendments consequential upon the new objects provision in section 123TB.
Part 3 – Voluntary income management agreements

This Part makes a number of amendments to the existing scheme of voluntary income management.

Item 46 makes an amendment to paragraph 123UM(5)(b) to change the number of occasions on which a person can terminate a voluntary income management agreement in a 12-month period and still be able to enter into a new voluntary income management agreement. Before this amendment, the Secretary was not able to enter into a voluntary income management agreement with a person if, during the 12-month period ending immediately before the new voluntary agreement was intended to commence, there were two or more occasions on which previous voluntary income management agreements relating to the person were terminated. Because of the amendments contained in this bill, which will now set a minimum period for voluntary income management of 13 weeks, the number of terminations, for the purposes of paragraph 123UM(5)(b), is being increased from two to four, as it is now less likely that people will leave voluntary income management after a short spell and then seek to re-enter.

Item 47 replaces the existing rule at paragraph 123UN(1)(b), which currently provides that a voluntary income management agreement will remain in force for a maximum period of 12 months (subject to section 123UO). This amendment removes the 12 month maximum period, and provides that an agreement remains in force until terminated (under section 123UO), or until the end of the period, if any, specified in the agreement (which must be a minimum of 13 weeks) during which it is to remain in force. This amendment allows people who wish to stay subject to voluntary income management for a period longer than a year will not need to end a current agreement and enter into a new agreement in order to be able to do so.

Item 48 repeals subsection 123UN(2), which is no longer needed because of the amendment made at item 47 (which refers specifically to termination under section 123UO).

Items 49 and 50 establish that a person cannot ask the Secretary to terminate their voluntary income management agreement unless it has been in place for at least 13 weeks. This amendment is designed to minimise the extent to which people rotate on and off voluntary income management within a short period of time, as it is inefficient to service people for a very short duration.

Item 51 is an application provision that ensures that the amendments made by item 47 (change in number of terminations from two to four) and items 48, 49 and 50 (new 13-week length of voluntary income management agreements rule) apply only in relation to a voluntary income management agreement that is entered into after commencement of those items (see clause 2 of this bill).
**Item 52** shortens the period following the termination of a voluntary income management agreement within which a person is unable to enter into a new agreement. This period is reduced from 60 to 21 days. This rule has been changed as the new minimum duration for voluntary agreements will reduce the likelihood of people leaving income management after a short spell and then seeking to re-enter.

**Item 53** is an application provision, which ensures that the amendment made by **item 52** is effective only in circumstances where the relevant termination occurs after commencement of that item. Where the termination occurs before commencement, this means that the old 60-day rule applies.

**Part 4 – New social security payments**

**Items 54 to 57** make amendments to the *Income Tax Assessment Act 1997* (ITAA97) in respect of a new matched savings scheme (income management) payment and a new voluntary income management incentive payment created by this Schedule.

**Items 54 and 55** insert the new matched savings scheme (income management) payment and the new voluntary income management incentive payment under the heading ‘social security or like payments’ in section 11-15 of the ITAA97, which provides for a list of statutory income which is exempt only if it is derived by certain entities.

**Items 56 and 57** make amendments to section 52-10 of the ITAA97 to ensure that the matched savings scheme (income management) payment and the voluntary income management incentive payment are not subject to income tax.

**Items 58 and 60** inserts definitions into subsection 23(1) of the Social Security Act to define *matched savings scheme (income management) payment* and *voluntary income management incentive payment* as payments under the Social Security Act.

**Item 59** defines *voluntary income management agreement* in the Social Security Act by referring to its meaning in Part 3B of the Social Security Administration Act. This definition is relevant to the new voluntary income management incentive payment.

**Item 61** adds a new Part 2.25D into the Social Security Act to provide for qualification and payability rules for a new social security payment, voluntary income management incentive payment.

New section 1061W provides that a person is qualified for a voluntary income management incentive payment if the person has accrued a ‘qualifying incentive payment period’ (as explained in subsection 1061W(2)).
A person accrues a qualifying incentive payment period after the person has been subject to a voluntary income management agreement for a 26-week period. New subsection 1061W(3) makes it clear that, if a week in which a person is subject to an income management agreement is counted towards one qualifying period, that week cannot also count towards a second such period. This means that periods cannot overlap.

New section 1061WA provides for when a voluntary income management incentive payment is payable to a person. Under this provision, a person can receive a voluntary income management incentive payment in relation to each qualifying incentive payment period, provided they meet the qualification requirements in section 1061W. This means, for example, that a person who is subject to a voluntary income management agreement for 78 consecutive weeks (following commencement of this provision) can receive three different payments of voluntary income management incentive payment: that is, one for each of the three consecutive 26-week periods.

New section 1061WB specifies the amount of the voluntary income management incentive payment to be $250. This amount is not subject to indexation because it is not dealt with in Part 3.16 of the Social Security Act.

This item also inserts Part 2.25E into the Social Security Act to introduce a matched savings scheme (income management) payment.

New section 1061WG inserts the qualification criteria for the matched savings scheme (income management) payment. A person is qualified for the new payment if, amongst other things, the Secretary is satisfied that, throughout the ‘qualifying savings period’, the person has maintained a regular and consistent pattern of savings, and that the person has a ‘qualifying savings amount’. A person is also required to complete an approved course. It is intended that these courses could relate, amongst other things, to financial management or money management skills. In considering these criteria, the Secretary must comply with any decision-making principles made by the Minister for the purposes of this provision. (Principles made by the Minister for the purposes of this provision will be a legislative instrument.) A person’s savings, for this purpose, cannot be constituted by monies that are in their income management account.

Only a person who has been subject to income management in the qualifying savings period under the child protection, vulnerable welfare payment recipients, school enrolment, school attendance, disengaged youth or long-term welfare payment recipients measures (including if they change between these measures in that time) can qualify for this new payment.

A qualifying savings period can begin, for a person, once the person has commenced an approved course (as approved in a legislative instrument made by the Secretary). However, in order to qualify for the payment, the person must have completed the approved course.
A person’s qualifying savings amount is the amount of the increase in their savings (other than any amount credited to their income management account) in the savings period, subject to section 1061WH.

New section 1061WH specifies the amount of the matched savings scheme (income management) payment as the smaller of either the person’s qualifying savings or $500. This provision also provides that the payment is only to be paid as a single lump sum and that a person can receive a payment of this payment only once. A consequence of this provision is that, if a person has qualifying savings of, for example, $80 and the person claims a matched savings scheme (income management) payment, the person can only be paid $80 and no further amount. The $500 upper-limit on the quantum of a matched savings scheme (income management) payment is not subject to indexation because it is not dealt with in Part 3.16 of the Social Security Act.

**Item 62** inserts new section 12J into the Social Security Administration Act. It provides that a claim is not required for voluntary income management incentive payment. This provision is required because, without it, the general rule in section 11 of the Social Security Administration Act would apply and would require a claim. A claim will be required for the matched savings scheme (income management) payment.

**Item 63** inserts two new paragraphs into subsection 47(1) of the Social Security Administration Act, to ensure that the voluntary income management incentive payment and the matched savings scheme (income management) payment are listed in the definition of ‘lump sum benefit’. Because of the inclusion of these two new payments in this provision, subsection 47(4) will apply to ensure they are to be paid to a qualified person.

**Item 64** inserts new Subdivision DD into Division 5 of Part 3B of the Social Security Administration Act to provide for deductions from voluntary income management incentive payments and matched savings scheme (income management) payments.

Under new sections 123XPH and 123XPI, if a matched savings scheme (income management) payment or a voluntary income management incentive payment is payable to a person who is subject to income management, 100 per cent of the payment is the ‘deductible portion’. This means that the full amount of these payments is to be deducted and credited to the Special Account and to the person’s income management account.

**Item 65** is an application provision, which ensures that: in relation to the voluntary income management incentive payment, only periods in which a person is subject to a voluntary income management agreement after the commencement of Part 4 of this Schedule count towards their qualifying incentive payment period; and, in relation to the matched savings scheme (income management) payment, a qualifying savings period can only begin after the commencement of Part 4 of this Schedule.
Schedule 3 – Alcohol

Summary

This Schedule amends the NTER alcohol measures so that, instead of being a blanket set of restrictions applying across predominantly Indigenous areas of the Northern Territory, community restrictions are able to be tailored to the circumstances of each area following consideration, on a case by case basis, of evidence about alcohol-related harm in each community, community consultation about the effectiveness of restrictions, and consideration of whether alternative restrictions, including alcohol management plans, are appropriate for communities.

Background

The Government intends the alcohol restrictions set out in Part 2 of the NTNER Act, as amended by this Schedule, to be special measures under the Racial Discrimination Act.

Special measures are measures that help people of a particular race to enjoy their human rights equally with others. The alcohol restrictions give effect to the Government’s intention to protect the people who need it most, and are an important part of the Government's approach to reducing the level of alcohol-related harm in Indigenous communities in the Northern Territory.

The Government has issued a report (the NTER Redesign Consultation Report) on the NTER Redesign Consultations, which were undertaken in the development of this legislation, and a Statement (the NTER Redesign Statement) that announced the Government’s approach to this measure. The Statement and the Report contain further material that is important to this special measure.

The Government understands the important decisions that need to be made before introducing special measures. The Government has given careful consideration to whether these laws are a necessary and appropriate way to address the problems affecting Indigenous people in the Northern Territory. These measures, as amended by this Schedule, will underpin the sustainable, long-term development phase of the NTER. The legislation that gives effect to these measures is time-limited, with a clear end date, and will cease in August 2012.

This Schedule introduces new measures to reduce alcohol-related harm in Indigenous communities in the Northern Territory. The Government recognises the established link between intoxication and violence and the need to continue alcohol restrictions to protect people within Indigenous communities in the Northern Territory from being subjected to alcohol-related harm. The continuation of restrictions was strongly supported in the NTER Redesign Consultations.
The new measures enable community restrictions to be developed which are tailored to the circumstances of each area following consideration of evidence about alcohol-related harm in each community, community consultation about the effectiveness of restrictions, and consideration of whether alternative restrictions, including alcohol management plans, are appropriate for communities on a case by case basis.

The amendments made by this Schedule include:

- explicitly stating that the objective of the alcohol measures is to reduce alcohol-related harm in Indigenous communities in the Northern Territory;

- amending parts of existing section 11 (dealing with the notification of areas) and section 12 (dealing with the modification of the Northern Territory Liquor Act in prescribed areas) of the NTNER Act to allow more discretion in placing appropriate signage and publishing notices;

- removing the provisions that applied Division 4 of Part VII of the Northern Territory Police Administration Act to all prescribed areas (which allowed for all prescribed areas to be treated as if they were a public place) and replacing those provisions with a consultative scheme;

- allowing for alcohol management plans to be implemented in prescribed areas or parts of prescribed areas after consultation with stakeholders; and

- removing Division 3A of Part 2 of the NTNER Act so that certain record keeping requirements no longer apply.

The amendments made by this Schedule commence on 1 July 2010.

**Explanation of the changes**

**Objects clause**

**Item 1** inserts new section 6A into Part 2 of the NTNER Act. The purpose of new section 6A is to set out expressly the object of Part 2 of the NTNER Act, which is to enable special measures to be taken to reduce alcohol-related harm in Indigenous communities in the Northern Territory.

**Notice of areas**

The purpose of **items 2 to 9** is to provide the Northern Territory Licensing Commission with greater discretion in notifying areas that are subject to alcohol restrictions under the NTNER Act.
Item 2 amends existing subsection 11(1) of the NTNER Act to give the Northern Territory Licensing Commission a discretionary power regarding the posting of notices.

Item 3 repeals existing paragraph 11(1)(d) and substitutes a discretionary power for the Northern Territory Licensing Commission to set out information on signage that it considers appropriate.

Item 4 replaces the word ‘must’ with the word ‘may’ in existing subsection 11(2), thereby giving the Northern Territory Licensing Commission discretion to publish a newspaper notice regarding the alcohol restrictions which apply in a given area.

Item 5 repeals existing paragraph 11(2)(c) and replaces it with a new paragraph that gives the Northern Territory Licensing Commission further discretion regarding the content of notices published in newspapers under subsection 11(2).

Item 6 repeals existing subsection 11(3), which is no longer required as a consequence of the amendments made by items 2, 3 and 4 of this Schedule, and replaces it with a new subsection, which provides that the Northern Territory Licensing Commission may consult with people living in a prescribed area regarding the content of a notice posted or published under subsection 11(1) or 11(2).

Item 7 amends existing subsection 12(10) to make the posting of notices under this subsection by the Northern Territory Licensing Commission discretionary.

Item 8 removes the words ‘must also’ and substitutes the word ‘may’ in existing subsection 12(11) to give the Northern Territory Licensing Commission discretion as to whether to publish a notice under this subsection.

Item 9 repeals existing subsection 12(12), which is no longer required, as a consequence of the amendments made by items 7 and 8 of this Schedule.

Police powers

Item 10 repeals existing section 18 of the NTNER Act, which modified the operation of the Northern Territory Police Administration Act for the purposes of the NTER, and replaces it with new section 18.

Section 18 provided for each prescribed area to be treated as if it were a public place under Division 4 of Part VII of that Act. New section 18 provides that Division 4 of Part VII of the Northern Territory Police Administration Act applies to a prescribed area (or part of prescribed area) as if it were a public place only if the Minister makes a declaration to this effect, following a request by, or on behalf of, a person ordinarily resident in the relevant area.
The Commonwealth Minister may make a declaration under subsection 18(1) only after community consultation has been undertaken, as provided for in new section 18, and then taking into account the criteria provided in the section.

A declaration made by the Minister under new subsection 18(1) will be a legislative instrument.

Community consultation

In order to meet the objective, and support the special measures, of Part 2 of the NTNER Act, the Minister must consult with a community in respect of which a declaration under subsection 18(1) is proposed to be made.

New subsection 18(1) allows the Minister to declare that Division 4 of Part VII of the Northern Territory Police Administration Act applies to a specified prescribed area, or a specified part of a prescribed area, as if the area or part were a public place.

Where a person has requested under subsection 18(2) that a declaration under subsection 18(1) be made, the Minister has an obligation under subparagraph 18(3)(a)(i) to ensure that information detailing the proposal for the declaration is made available to people in the relevant area. Subparagraph 18(3)(a)(ii) provides that an explanation of the consequences of the declaration must also be made available to people in the relevant area.

Where there is a proposal to make a declaration, subparagraph 18(3)(b)(i) requires the Minister to ensure that opportunities have been made available to the people within the relevant area to discuss the proposal. Subparagraph 18(3)(b)(ii) requires the Minister to ensure also that opportunities have been made available to the people within the relevant area to discuss the consequences of making such a declaration.

Paragraph 18(3)(b)(iii) provides that the Minister must ensure that opportunities have been made available to people in the relevant area to discuss their circumstances, concerns and views with employees of the Commonwealth or any person that the Minister considers appropriate, before a declaration is made under subsection 18(1).

Subsection 18(4) provides that a declaration made under subsection 18(1) is not invalid where the consultation requirements set out in subsection 18(3) have not been complied with.
Criteria for making a declaration

The Minister is obliged to have regard to criteria detailed in new subsection 18(5) before making a declaration under subsection 18(1). The Minister must have regard to:

- the well-being of people living in the prescribed area or part (paragraph 18(5)(a));
- whether there is reason to believe that people living in that prescribed area or part have been the victims of alcohol-related harm during a period considered by the Minister to be relevant (paragraph 18(5)(b));
- the extent to which people living in the area or part have, during a period considered by the Minister to be relevant, expressed concerns about being at risk of alcohol-related harm (paragraph 18(5)(c));
- the extent to which people living within that area or part have expressed the view, during a period considered by the Minister to be relevant, that their well-being will be improved if the relevant provisions of the Northern Territory Police Administration Act are applied in their community (paragraph 18(5)(d));
- whether or not there is an alcohol management plan for the relevant community or communities within the area or part (paragraph 18(5)(e));
- the results of community consultation (paragraph 18(5)(f)); and
- any other matters that the Minister considers relevant to the making of a declaration under subsection 18(1) (paragraph 18(5)(g)).

Application of alcohol restrictions to prescribed areas

Item 11 inserts new subsections 19(3), 19(4), 19(5), 19(6) and 19(7) into existing section 19 of the NTNER Act, which deals with declarations by the Minister about the operation of the alcohol restrictions in certain prescribed areas. The purpose of section 19 is to provide the Minister with powers to cease the operation of some or all the provisions in Division 2 of Part 2 of the NTNER Act, which give effect to the alcohol restrictions, in relation to a prescribed area, a part of a prescribed area, or all prescribed areas.

The reforms to section 19 are intended to facilitate more appropriate and adapted alcohol measures being put in place in prescribed areas, so the measures address the separate needs and circumstances of the relevant Indigenous communities. The reforms to section 19 are designed with an approach that emphasises the importance of evidence about alcohol-related harm in each community, community consultation about the effectiveness of restrictions, and the existence of alternative restrictions, so that the Minister may declare that certain provisions in Division 2 of Part 2 of the NTNER Act cease for one or more prescribed areas, or parts of prescribed areas.
New subsection 19(3) provides the Minister with a power to make a declaration under paragraph 19(1)(b) to cease the operation of certain provisions in a particular prescribed area (or a part of a prescribed area), based on the Minister’s own initiative; or following a request made by a person, or on behalf of a person, who is ordinarily resident in the relevant area, after complying with the procedures and having regard to the criteria described below.

New subsection 19(4) is inserted to clarify that contraventions of Division 2 of Part 2 of the NTNER Act that occur prior to the date on which a declaration made under paragraph 19(1)(b) takes effect in relation to a prescribed area, or part of a prescribed area, can be pursued after that date.

Community consultation

Before the Minister makes a declaration under paragraph 19(1)(b), the Minister has an obligation under new subparagraph 19(5)(a)(i) to ensure that information detailing the proposal for the declaration is made available to people in the relevant area. Subparagraph 19(5)(a)(ii) provides that an explanation of the consequences of the declaration must also be made available to people in the relevant area.

Where there is a proposal to make a declaration, subparagraph 19(5)(b)(i) requires the Minister to ensure that opportunities have been made available to the people within the relevant area to discuss the proposal. Subparagraph 19(5)(b)(ii) requires the Minister to ensure also that opportunities have been made available to the people within the relevant area to discuss the consequences of making such a declaration.

Paragraph 19(5)(b)(iii) provides that the Minister must ensure that opportunities have been made available to people in the relevant area to discuss their circumstances, concerns and views with employees of the Commonwealth or any person that the Minister considers appropriate, before a declaration is made under paragraph 19(1)(b).

Subsection 19(6) provides that a declaration made under paragraph 19(1)(b) is not invalid where the consultation requirements set out in subsection 19(5) have not been complied with.

Criteria for making a declaration

The Minister is obliged to have regard to criteria specified in new subsection 19(7) before making a declaration under paragraph 19(1)(b). The Minister must have regard to:

- evidence about the well-being of people living in the prescribed area or part (paragraph 19(7)(a));
• evidence about whether people living in that prescribed area or part have, during a period considered by the Minister to be relevant, been the victims of alcohol-related harm (paragraph 19(7)(b));

• the extent to which people living in that area or part have expressed their concerns, during a period considered by the Minister to be relevant, about being at risk of alcohol-related harm (paragraph 19(7)(c));

• the extent to which people living in that area or part have, during a period considered by the Minister to be relevant, expressed the view that their well-being will be improved if some or all of the restrictions provided for in Division 2 of Part 2 of the NTNER Act continue to apply to the area or part (paragraph 19(7)(d));

• whether or not there is an alcohol management plan for the relevant community or communities within the area or part (paragraph 19(7)(e));

• the results of community consultation (paragraph 19(7)(f)); and

• any other matters that the Minister considers relevant to the making of a declaration under paragraph 19(1)(b) (paragraph 19(7)(g)).

Reapplication of NTER alcohol restrictions

Item 12 adds new section 19A, which gives the Minister the power to make a legislative instrument reapplying alcohol measures in a prescribed area or part of a prescribed area (by revoking a declaration made under section 19). Such an instrument would have the effect of reimposing those provisions of Division 2 of Part 2 of the NTNER Act that are specified in the legislative instrument. If an instrument made under section 19A revokes a declaration made under section 19, but no specific measures are referred to in the section 19A instrument, then all of the measures ceased by the instrument made under section 19 would again apply.

The Minister may reimpose the measures on her or his initiative or on request of a person ordinarily resident in the relevant area.

New section 19A requires community consultation before a ministerial declaration is made, and also specifies the criteria for the Minister to consider before making a revocation.

A revocation made by the Minister under new section 19A is a legislative instrument.

Repeal of record keeping requirements

Item 13 repeals existing Division 3A of Part 2 of the NTNER Act. Division 3A imposed certain record-keeping requirements on the sale of liquor in the Northern Territory.
Schedule 4 – Prohibited material

Summary

The Government will continue the restrictions on prohibited material in the prescribed areas of the Northern Territory. Existing restrictions on the possession and supply of prohibited pornographic and very violent material may be removed following requests made by, or on behalf of, people ordinarily resident in a prescribed area. Before making a declaration to remove restrictions, the Minister or delegate must have regard to evidence about the well-being of, and the views of, the people living in the prescribed area. Residents of the prescribed area will be consulted before a declaration is made that restrictions will no longer apply to the prescribed area.

Background

As part of the NTER, measures were introduced to reduce the prevalence of pornography in prescribed areas.

Current restrictions

Part 10 of the Classification (Publications, Films and Computer Games) Act 1995 (the Commonwealth Classification Act) prohibits the possession and supply of pornographic and very violent material (prohibited material) in prescribed areas of the Northern Territory. These prohibitions were introduced in response to the findings of the Little Children are Sacred Report that people in Indigenous communities in the Northern Territory were concerned about the availability of pornography in their communities.

The Commonwealth Classification Act facilitates the operation of the National Classification Scheme, a cooperative arrangement between the Commonwealth, States and Territories. 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.

Under the National Classification Scheme, the X 18+ classification is a special and legally restricted classification for films 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 X 18+ and Category 1 restricted or Category 2 restricted are legally restricted to adults.
A film, computer game or publication will be classified Refused Classification (RC) where 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 within any other category.

Under the Northern Territory Classification of Publications, Films and Computer Games Act 2005 (the Northern Territory Classification Act), restrictions apply to the sale, exhibition, attendance at and copying of films which are unclassified, or classified RC or X 18+. Restrictions apply to the sale or delivery of unclassified computer games or computer games classified RC. 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 material classified X 18+ is restricted in the Northern Territory, the sale and hire of X 18+ material, unlike in the States, is permitted in parts of the Northern Territory.

Part 10 of the Commonwealth Classification Act divides prohibited material into two ‘levels’. Level One prohibited material may contain content of a sexualised nature, including:

- publications that are, or would likely be, classified Category 1 restricted or Category 2 restricted;
- films that are, or would likely be, classified X 18+; and
- prohibited advertisements.

Level Two content includes films, computer games or publications that are, or would likely be, classified RC.

**Changes proposed to current restrictions**

The Government intends the prohibited material restrictions set out in Part 10 of the Commonwealth Classification Act, as amended by this Schedule, to be special measures under the Racial Discrimination Act.

Special measures are measures that help people of a particular race to enjoy their human rights equally with others. These restrictions give effect to the Government’s intention to protect the people who need it most, and are an important part of the Government’s commitment to protect children in Indigenous communities in the Northern Territory.

The Government has issued a report (the NTER Redesign Consultation Report) on the NTER Redesign Consultations, which were undertaken in the development of this legislation, and a Statement (the NTER Redesign Statement) that announced the Government’s approach to this measure. The Statement and the Report contain further material that is important to this special measure.
The Government understands the important decisions that need to be made before introducing special measures. The Government has given careful consideration to whether these laws are a necessary and appropriate way to address the problems affecting Indigenous people in the Northern Territory. These measures, as amended by this Schedule, will underpin the sustainable, long-term development phase of the NTER. The legislation that gives effect to these restrictions is time-limited, with a clear end date, and will cease in August 2012.

The restrictions on prohibited material have achieved important benefits in prescribed areas. The restrictions protect children from exposure to pornographic and very violent material. The restrictions have also raised awareness of the dangers of exposing children to pornographic and very violent material.

The Government is aware that the link between exposure to pornography and sexual abuse is contested. However, the Government has decided to take a harm-minimisation approach to this issue.

The Government’s decision to maintain restrictions on prohibited material reflects the preferences of people living in prescribed areas. The NTER Redesign Consultations revealed that many Indigenous people did not want pornography in their communities and did not want children exposed to this material. Participants in the Consultations wanted pornography restrictions to continue in some form. The Government has listened to these concerns and will maintain restrictions on prohibited material in prescribed areas.

The Government believes it is important that the restrictions on prohibited material in prescribed areas continue to be of benefit to people living in those areas. Where a community believes that restrictions on prohibited material are no longer of benefit, they may apply to have these restrictions lifted.

These amendments will give people who ordinarily reside in prescribed areas the opportunity to ask that the NTER restrictions not apply to that prescribed area or to part of that prescribed area. This means that restrictions can be based on and tailored to needs at a community level. Before making a declaration to remove restrictions, the Minister or delegate must have regard to the well-being and the views of the people living in the prescribed area.

Where such a declaration is made, the restrictions applicable under the Northern Territory Classification Act will apply to that prescribed area or part of a prescribed area instead.

Once a declaration has been made, circumstances may change and it may be necessary to reinstate restrictions on prohibited material. In this instance, the Minister can revoke the declaration. Before revoking a declaration, the Minister or delegate must have regard to the well-being and the views of the people living in the prescribed area.
The amendments made by this Schedule commence on 1 July 2010.

**Explanation of the changes**

**Item 1** inserts a new section 98A, entitled ‘Main object of Part’, into the Commonwealth Classification Act. This new section indicates that restrictions on prohibited material remain in place to protect children in prescribed areas from exposure to harmful material, including pornographic and very violent material. The purpose of this new section is to set out expressly the object of Part 10 of the Act, which is to enable special measures to be taken to protect children living in Indigenous communities in the Northern Territory from being exposed to prohibited material.

It is a widely-held view that the exposure of children to pornography or very violent material can be harmful. This is one of the reasons why a key principle underpinning Australia’s National Classification Scheme is that minors should be protected from material likely to harm or disturb them. These amendments will maintain prohibitions on the possession and supply of pornographic and very violent material in prescribed areas unless the Minister or delegate makes a declaration removing the restrictions. A declaration can be made only if the criteria specified in **item 5** are considered by the Minister. These criteria are designed to protect children in prescribed areas as a particularly vulnerable group.

The amendments are designed to be special measures within the meaning of section 8 of the Racial Discrimination Act. The amendments are designed to assist people living in prescribed areas to enjoy, equally with others, human rights and fundamental freedoms.

**Item 2** inserts a definition of ‘child’ into section 99 of the Commonwealth Classification Act. This definition is relevant to the criteria for a declaration inserted by **item 5**.

**Item 3** inserts a definition of ‘Indigenous Affairs Minister’ into section 99 of the Commonwealth Classification Act. **Item 4** inserts a definition of ‘Indigenous Affairs Secretary’ into section 99 of the Commonwealth Classification Act. These definitions are relevant to new sections 100A and 100B, which are inserted by **item 5**.

**Item 5** inserts new section 100A, entitled ‘Declarations by Indigenous Affairs Minister’, and new section 100B, entitled ‘Reapplication of this Part’ into the Commonwealth Classification Act.

Section 100A allows the Minister to declare that prohibitions on the possession and supply of prohibited material, under Part 10 of the Commonwealth Classification Act, will no longer apply in a specific prescribed area or part of a prescribed area. The Minister may delegate the authority to make this declaration to the Indigenous Affairs Secretary.
Before making a declaration to remove restrictions, the Minister or delegate must have regard to the well-being and the views of the people living in the prescribed area. The requirement to consider the well-being of people living in prescribed areas has been included in this bill in response to concerns that the availability of prohibited material in prescribed areas can contribute to harm being done to people living in those areas. There has been particular concern expressed about the exposure of children in these areas to prohibited material.

Before making a declaration, the Minister or delegate must also consult with law enforcement authorities. Finally, the Minister must also have regard to any other matter the Minister considers relevant to the making of this declaration. The Minister will also consult with the Commonwealth Minister responsible for classification.

Before a declaration is made, the Minister will ensure that people living in a prescribed area have had a chance to consider the proposal to remove restrictions in the area, and the possible consequences of the removal of those restrictions. Residents will be given the opportunity to discuss the proposal and its possible consequences with suitable authorities before a declaration is made.

Section 100B allows the Minister or delegate to revoke a declaration made under section 100A. The Minister may make a revocation on his or her own initiative or following a request to the Minister by, or on behalf of, a person who ordinarily resides in a prescribed area. The Minister may delegate the authority to make this revocation to the Indigenous Affairs Secretary.

A revocation can be made only if the Minister or delegate is satisfied that information about the proposed revocation, and an explanation of the consequences of the revocation, have been made available to people in the affected area. Before revoking a declaration, the Minister or the Minister’s delegate must have regard to certain criteria. These are the same criteria the Minister or delegate needs to consider before making a declaration to remove restrictions.
Schedule 5 – Acquisition of rights, titles and interests in land

Summary

This Schedule amends the provisions of the NTNER Act governing the five-year leases that have been compulsorily acquired over certain Northern Territory communities, to confirm the beneficial intent of the leases. New provisions will make improvements, such as defining the permitted use of the leases, stipulating the objectives of the leases, requiring the Minister to make guidelines governing land use approval processes, and enshrining in legislation the intended transition to voluntary leases.

Background

The five-year leases were acquired over 64 Northern Territory communities to enable the smooth implementation of the NTER and have been used to underpin key NTER activities including the installation of safe houses and Government Business Manager accommodation; the Community Clean-Up program; reformed property and tenancy management arrangements; and housing refurbishments.

Prior to the five-year leases, occupation and use of the land was often without a secure legal basis. As leaseholder, the Australian Government now requires all parties seeking to use land or buildings (other than those parties with a relevant preserved right, title or other interest) or seeking to alter the use of land or buildings on five-year leased land to receive approval. For the first time, a consistent and transparent process is in place to allocate land and provide certainty for users. This process involves consulting communities about proposed development, considering competing claims to land and seeking planning approval. Any approval issued is made subject to conditions, including obligations for the developer to insure and maintain the land and/or buildings, and to comply with all relevant legislation such as the Northern Territory Aboriginal Sacred Sites Act (NT). A comprehensive record is being kept as to what uses of land are approved, what interests are held and by whom.

The NTER Redesign Consultations indicated some support for the benefits of the five-year leases, and support for the benefits of longer-term consensual leases, including the prospect of upgrades and renovations to houses, improvements to community infrastructure and associated creation of employment opportunities for local people.

The Government intends the provisions contained in Part 4 of the NTNER Act, as amended by this Schedule, to be special measures under the Racial Discrimination Act.
Special measures are measures that help people of a particular race to enjoy their human rights equally with others. Part 4 of the NTNER Act gives effect to the Australian Government’s intention to protect the people who need it most, and is an important part of the Australian Government’s approach to improving the delivery of services in Indigenous communities in the Northern Territory and promoting economic and social development in those communities.

The Government has issued a report (the NTER Redesign Consultation Report) on the NTER Redesign Consultations, which were undertaken in the development of this legislation, and a Statement (the NTER Redesign Statement) that announced the Government’s approach to this measure. The Statement and the Report contain further material that is important in relation to this special measure.

The Government understands the important decisions that need to be made before introducing special measures. The Government has given careful consideration to whether these laws are a necessary and appropriate way to address the problems affecting Indigenous people in the Northern Territory. The five-year lease laws, as amended by this Schedule, will underpin the sustainable, long-term development phase of the NTER. The leases are time-limited, with a clear end date, and will cease before or during August 2012.

The leases have already undergone improvements, including a substantial reduction of the five-year lease boundaries, which came into effect on 1 April 2009. The lease areas were originally set using aerial photographic maps. A later ground-based survey project enabled a closer match of the lease boundary with the town footprint and for those areas not essential for service delivery to be left out. This resulted in an overall reduction of approximately 50 per cent of the five-year leased area.

In response to the NTER Review Board’s recommendation that the Government make fair payments for these leases, the Government asked the NT Valuer-General in October 2008 to determine reasonable amounts of rent to be paid to the Aboriginal owners of five-year leased land. Following the Valuer-General’s first determination in relation to five-year leases on Milikapiti and Pirlangimpi in the Tiwi Islands, rental payments were made immediately to the Tiwi Land Council for the benefit of traditional owners. Payments will commence in relation to other five-year leased communities as soon as the relevant determinations are made by the Valuer-General.

In line with the Government’s commitment to voluntary lease arrangements, whole-of-township leases have been finalised for Nguiu in the Tiwi Islands and the Groote Eylandt region (covering Angurugu, Umbakumba and Milyakburra communities), and negotiations are underway in relation to other communities.
Housing precinct leases of 40 years covering all existing and proposed community housing have been executed for Wadeye, Maningrida, Gunbalanya and Galiwinku and there is agreement to housing precinct leases for several other communities. A similar lease has also been executed in relation to the Tennant Creek town camps.

The amendments made by this Schedule to Part 4 of the NTNER Act include amendments to:

- make the objectives of Part 4 clearer;
- define the permitted use of the five-year leases;
- clarify that exploration and mining are not permitted uses of the five-year leases;
- require that the five-year leases be administered with regard for Aboriginal people and culture;
- require that clear guidelines to govern the land use approval process for five-year leased land be developed and that regard be had to those guidelines; and
- facilitate the Australian Government’s commitment to move from five-year leases to voluntary leases by allowing land owners to request good faith negotiations.

These changes confirm that the purpose of the five-year leases is to improve the delivery of services and to promote economic and social development in the 64 Northern Territory communities over which there are five-year leases. The measures also clarify how the five-year leases operate and are to be administered and ensure the transparent allocation of lots and land use approvals in these communities.

The amendments made by this Schedule do not alter the existing term of the five-year leases: paragraph 31(2)(b) of the NTNER Act is not affected by the amendments.

The amendments made by this Schedule (other than the amendments made by items 3 and 4) commence on 1 July 2010.

The amendments made by items 3 and 4 will commence on a day to be fixed by Proclamation.
Explanation of the changes

**Item 1** inserts new section 30A in Part 4 of the NTNER Act. The purpose of new section 30A is to set out expressly the object of Part 4 of the NTNER Act, which is to enable special measures to be taken to improve the delivery of services in Indigenous communities in the Northern Territory, and to promote economic and social development in those communities.

**Item 2** inserts new subsections 35(2A) to 35(2D), which make clear the permitted use of the leases.

Subsection 35(2A) provides that the Commonwealth is entitled to use, and to permit the use of, land covered by a lease granted under section 31 of the NTNER Act for any use the Commonwealth considers is consistent with the fulfilment of the object of Part 4. Subsection 35(2A) also provides that the Commonwealth is not entitled to use, or to permit the use of, the land for any other use. Subsection 35(2A) operates as a statutory condition of the leases and makes it clear that the leases are granted to the Commonwealth to allow the Commonwealth to undertake or facilitate measures for the benefit of members of the communities.

Subsection 35(2B) provides that the permitted use in subsection 35(2A) does not entitle the Commonwealth to engage in or permit exploration or mining in respect of land covered by a lease granted under section 31. This addresses concerns that the leases may be used for extraneous purposes and specifically clarifies that the leases are not granted to the Commonwealth for purposes related to exploration or mining.

Subsection 35(2C) defines the terms *exploration* and *mining*, which are expressed to have the same meaning as in the Northern Territory Mining Act.

Subsection 35(2D) clarifies that new subsections 35(2A) and 35(2B) are not intended to limit the application of Part IV of the Aboriginal Land Rights (Northern Territory) Act 1976.

**Item 3** inserts a note at the end of subsection 35(5) to the effect that the Commonwealth must have regard to the matters specified in guidelines in force under subsection 35A(2) in exercising a power under subsection 35(5) to sublease, license, part with possession of or otherwise deal with its interest in a lease granted under section 31 of the NTNER Act.

**Item 4** inserts new section 35A.

Subsection 35A(2) requires the Minister to make, by legislative instrument, guidelines specifying matters the Commonwealth must have regard to when exercising a power under subsection 35(5) of the NTNER Act to sublease, license, part with possession of or otherwise deal with its interest in a lease granted under section 31 of the NTNER Act.
Subsection 35A(1) provides that, in exercising a power under subsection 35(5), the Commonwealth must have regard to the matters specified in the guidelines in force under subsection 35A(2).

Subsection 35A(3) provides that subsection 35A(1) does not prevent the Commonwealth from taking other matters into account in exercising a power under subsection 35(5).

The effect of section 35A is that the current administrative land use approval processes will now be dealt with under a legislative instrument.

**Item 5** inserts new section 36A which provides that, in administering a lease granted under section 31, regard must be had to the body of traditions, observances, customs and beliefs of Indigenous people generally or of a particular group of Indigenous people, as those traditions, observances, customs and beliefs apply in relation to the land covered by the lease. Subsection 36A(2) provides that subsection 36A(1) does not prevent regard being had to other matters in administering a lease granted under section 31. The administration of a lease includes the exercise of a power under subsection 35(5) in relation to the lease. The *Northern Territory Aboriginal Sacred Sites Act* (NT) will continue to apply.

**Item 6** inserts section new 37A. The purpose of section 37A is to facilitate the Commonwealth’s intended transition from compulsory leases to voluntary leases by allowing the owners of the land to negotiate terms and conditions for the leasing of the land to the Commonwealth or to another government party.

New subsection 37A(1) provides that the relevant owner of land leased under section 31 (the relevant owner) may request the Commonwealth to enter into negotiations on the terms and conditions of another lease covering all or part of the land leased to the Commonwealth.

New subsection 37A(2) provides that, if a relevant owner makes a request to negotiate the terms and conditions of another lease, the Commonwealth must engage in negotiations with the relevant owner in good faith if the Commonwealth considers that the Commonwealth may become the lessee of the new lease.

New subsection 37A(3) provides that the Commonwealth may invite other parties to participate in the negotiations. The other parties that may be invited to participate in the negotiations include the Northern Territory, an authority of the Commonwealth and an authority of the Northern Territory. This provision clarifies that negotiations on terms and conditions of a new lease may involve parties other than the Commonwealth, and may result in the grant of a lease to a party other than the Commonwealth. The Commonwealth may invite a person or body to participate in negotiations only if the Commonwealth considers that the person or body may become the lessee of the new lease.
Item 7 sets out how the provisions at items 1 to 6 are to apply.

Subitem 7(1) provides that new subsection 35(2A) applies in relation to the use of land on or after the commencement of this item (whether the leases were granted before, on or after that commencement).

Subitem 7(2) provides that new section 35A applies in relation to the exercise of powers on or after the commencement of that section (whether the leases were granted before, on or after that commencement).

Subitem 7(3) provides that new section 36A applies in relation to the administering of leases on or after the commencement of this item (whether the leases were granted before, on or after that commencement).

Subitem 7(4) provides that new section 37A, applies in relation to requests made on or after the commencement of this item (whether the leases were granted before, on or after that commencement).
Schedule 6 – Licensing of community stores

Summary

This Schedule amends the existing community stores licensing scheme in Part 7 of the NTNER Act to extend, improve and clarify the operation of that scheme. The amendments will include: extending the scope of the licensing scheme to cover shops which are a key source of food, drink and grocery items for an Indigenous community; modifying the range of ‘assessable matters’ which form the basis for the assessment of community stores in relation to licensing decisions; ensuring that the legislative scheme reflects the specific responsibilities of store owners and store managers in the operation of a community store; and including provision for the Secretary to require the owner of a licensed community store, where the owner is incorporated under the Northern Territory Associations Act, to become registered under the Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006. The Schedule also makes provision for applications to be made to the Administrative Appeals Tribunal for the review of certain decisions made under the community stores licensing scheme, and removes the Commonwealth’s powers to acquire the assets and liabilities of a community store.

Background

Part 7 of the NTNER Act was originally introduced to address a number of concerns about the operation of community stores in remote Indigenous communities, and to help ensure the proper delivery of the income management arrangements established under Part 3B of the Social Security Administration Act.

The Government intends the community stores licensing scheme, as amended by this Schedule, to be a special measure under the Racial Discrimination Act.

Special measures are measures that help people of a particular race to enjoy their human rights equally with others. The community stores licensing scheme gives effect to the Government’s intention to protect the people who need it most, and is an important part of the Government’s approach to improving food security for residents in remote Indigenous communities.

The community stores licensing legislation supports the Government’s ongoing commitment to build a best-practice model for the operation of community stores, reflecting their key role for the health and well-being of residents of Indigenous communities. This role is particularly important, given the high incidence of diet-related chronic health conditions, such as diabetes and cardiovascular disease, for Indigenous people. Therefore, improving food security in remote Indigenous communities is a very important component of the Government’s closing the gap agenda.
The Government has issued a report (the NTER Redesign Consultation Report) on the NTER Redesign Consultations, which were undertaken in the development of this legislation, and a Statement (the NTER Redesign Statement) that announced the Government’s approach to this measure. The Statement and the Report contain further material that is important in relation to this special measure.

Community stores are the primary vehicle to ensure access to an affordable and nutritious food supply for residents of remote Indigenous communities. They have a unique food security role, commonly holding a monopoly on the primary food supply.

The assessment process which underpins the community stores licensing scheme has demonstrated that community stores continue to vary greatly in the quality of retail management, the range and price of goods sold and store governance. Bad debts arising from poor management impact on the range and cost of stock able to be sold, particularly perishables. Prices may have to be increased to cover bad debts. Ultimately, the impact of the problems in stores is borne by community residents, who may not have any alternative but to shop at their local store.

The licensing of stores also supports income management, ensuring that stores have the capacity to comply with the requirements of the income management arrangements and that income managed funds are able to be spent in well-managed stores.

The stores licensing process involves the assessment and monitoring of community stores. These processes enable close scrutiny of the financial, retail and governance arrangements in a particular store, as set out in the assessable matters. This scrutiny, and the associated monitoring undertaken by licensing personnel, enables early intervention to resolve problems before they become a threat to food security.

A consistent view expressed throughout the NTER Redesign Consultations was that community stores licensing should continue and that the range and quality of food and household items available from local stores – especially fresh, healthy food including fruit, vegetables and meat – had improved under the NTER.

There was broad support for the strengthened licensing arrangements proposed by the Government in the Future Directions Discussion Paper.

The amendments made by this Schedule will strengthen the community stores licensing scheme by providing for an explicit food security objective in relation to community stores licensing and providing greater clarity and transparency in the focus of the licensing assessment process. It will also establish a legislative link between stores licensing and participation in the income management arrangements under the social security law.
The new provisions will strengthen the governance of community stores and provide a wider range of options to intervene where stores are not meeting licensing requirements. The amendments also provide for review of key licensing decisions by the Administrative Appeals Tribunal.

The community stores licensing scheme is time-limited and will cease in August 2012.

The Government understands the important decisions that need to be made before introducing special measures. The Government has given careful consideration to whether these laws are a necessary and appropriate way to address the problems affecting Indigenous people in the Northern Territory. These laws will underpin the sustainable, long-term development phase of the NTER.

The amendments made by this Schedule (other than the amendment made by item 50) commence on 1 July 2010.

The amendment made by item 50 will commence on the later of the following dates: 1 July 2010, and the 28th day after this bill receives Royal Assent.

**Explanation of the changes**

**Part 1 – Amendments of Acts**

**Defined terms**

Items 1, 2, 3, 4, 5, 6, 8, 9, 10, 11 and 16 insert new defined terms, and make changes to existing definitions, in Part 7 of the NTNER Act.

**Community store licence**

**Item 1** amends the definition of *community store licence* in section 3 of the NTNER Act by deleting the words ‘to operate a community store’ and substituting the words ‘granted under section 97’. This change clarifies the definition of community store licence and directs the reader to section 97, which is amended by items 22 to 26 of this Schedule.

**Food Security**

**Item 2** inserts a new defined term, *food security*, into section 3 of the NTNER Act. The definition directs the reader to new section 91B, which is inserted by item 8 of this Schedule.
Item 8 inserts new section 91B, which defines **food security** as a reasonable ongoing level of access to a range of food, drink and grocery items that is reasonably priced, safe and of sufficient quantity and quality to meet nutritional and related household needs. In this context, safe food includes food that is not likely to cause physical harm to a person who might later consume it (for example, food that is not damaged, deteriorated or perished to an extent that affects its reasonable intended use).

The term ‘food security’ is used in the legislation in relation to:

- the objects of Part 7, which are set out in new section 91A (inserted by **item 7** of this Schedule);

- additional matters (relating to food security), which may be specified by the Minister, to be included in the ‘assessable matters’ which are taken into account in the assessment of community stores under the community stores licensing scheme;

- the matters an authorised officer must have regard to in assessing a community store (paragraph 94(2)(a));

- the Secretary deciding that a community store licence is not required in relation to a community store where to require one would not be reasonably likely to promote food security for an Indigenous community that the community store services or may service (subsection 95A(3), inserted by **item 20**); and

- a number of the matters the Minister must have regard to in determining the scope of the operation of the community stores licensing scheme when specifying an area, place or premises in the Northern Territory under section 123 of the NTNER Act (see paragraphs 123B(b) and (c) inserted by **item 53** of this Schedule).

**Definitions of manager, owner and operator**

Item 3 inserts a new defined term, **manager**, into section 3 of the NTNER Act. The definition directs the reader to new section 93A, which is inserted by **item 16** of this Schedule.

Item 4 removes the defined term, **operator**, which is currently contained in section 3 of the NTNER Act. The concept of a store ‘operator’ is superseded by the introduction of the terms ‘owner’ and ‘manager’, which are introduced by **item 16** of this Schedule, and the recognition of the respective roles they play in relation to the operation of the community store.

Item 5 inserts a new defined term, **owner**, into section 3 of the NTNER Act. The definition directs the reader to new section 93A, which is inserted by **item 16** of this Schedule.
Item 16 inserts new sections 93A, 93B and 93C into the NTNER Act.

Section 93A sets out the meaning of two new terms, owner and manager. This amendment recognises the separate roles and responsibilities that apply to a person who owns a community store (the owner) and a person who is responsible for the day to day management of a community store (the manager), where these are separate people.

New section 93B clarifies the operation of the definition of the term ‘owner’, and the application of various provisions in Part 7 of the NTNER Act, in situations where the owner of the store is an unincorporated association or a partnership.

New section 93C clarifies the application of various provisions in Part 7 of the NTNER Act in situations where more than one person is an ‘owner’ or a ‘manager’ of a community store.

New subsection 93A(1) provides that the owner of a community store is that person who has overall ownership of the community store and is entitled to the profits (if any) and liable for the debts (if any) of the community store.

Subsection 93A(2) provides that the manager of a community store is the person who is responsible for the day to day management of a community store.

As there may be instances where both the owner and the manager of a community store are the same person, paragraph 93A(3)(a) confirms that both the owner and the manager of a community store can be the same person.

New paragraph 93A(3)(b) confirms that more than one person can be the owner or the manager of a community store. This is to take account of situations where there may be co-owners of a community store, or more than one person who owns the business, or where more than one person manages the business.

It is intended that a community store licence will be issued to the store owner, that is, the person (or persons) with overall ownership of the community store who is entitled to the profits (if any), and liable for the debts (if any), of the community store.

The existing legislation provides for a licence to be issued to the ‘operator’ of the store, which was defined as being a person having responsibility for the overall management and administration of a community store. It is intended that, in licensing store owners, a licence will be issued to the person (or persons) who bears the greatest risk of loss should a community store licence be revoked, that is, the owner of the community store.
There are several amendments to Part 7 resulting from this change. For example, the repeal of subsection 97(1) and insertion of new subsection 97(1), and the repeal of paragraph 97(3)(b) and insertion of new paragraph 97(3)(b), to reflect the removal of the concept of a 'store operator' holding a licence and the issuing of licences to store owners.

For the avoidance of doubt, new section 93B provides clarification about the operation of the definition of ‘owner’, and the application of various provisions in Part 7 of the NTNER Act, in situations where the owner of a community store is an unincorporated association or a partnership.

Difficulties potentially arise in relation to the capacity of certain entities, such as unincorporated associations or partnerships, to own property (including a store or business) where those entities are not a separate or distinct legal entity. Such entities generally are not legal ‘persons’, and have no separate or distinct legal status from their members. Accordingly, in such cases uncertainty can arise as to which natural person or legal entity actually owns property. It is possible that there may be circumstances where, while the members of an unincorporated association or partnership may consider or have intended that the relevant entity to which they belong (the association or partnership, as the case may be) owns the community store, the actual legal title might in fact be vested in one of the members individually, or owned jointly by all of the members, or held by a trustee on behalf of the members or the entity. In order to avoid confusion or uncertainty as to whether a licence or notice has been validly issued to, or an obligation or condition or restriction validly imposed upon, the ‘owner’ of the community store in such cases, new section 93B is intended to clarify the basis on which the provisions in Part 7 of the NTNER Act apply to such entities and their members.

New section 93B clarifies the meaning of the word owner in circumstances where an unincorporated association or partnership owns a community store and derives profits or accrues liabilities for the community store. It does this in two ways:

- by providing, in paragraph 93B(1)(a), that an unincorporated association or partnership is taken to be a 'person' for the purposes of the definition of owner in subsection 93A(1) of the NTNER Act. Section 22(1)(a) of the Acts Interpretation Act defines the word 'person' as including a natural person, a corporation or a body politic. Paragraph 93B(1)(a) effectively broadens the definition of the word person in respect of the way the term is used in the definition of ‘owner’ in Part 7 of the NTNER Act, to encompass unincorporated associations and partnerships; and
• by deeming, in new paragraph 93B(1)(b), an unincorporated association or partnership (‘the relevant entity’) to have overall ownership of the community store and to be entitled to the profits (if any), and liable for the debts (if any), of the community store if one or more of the members (or partners, as the case may be) of the relevant entity has overall ownership of the store business and is entitled to the profits and liable for the debts of the business. This covers circumstances where a member or partner, as the case may be, owns the community store in their capacity as a member of, or on behalf of, or has contributed or applied their own property for the purposes of, the relevant entity to which they belong. This will avoid the need to determine which of the members, or which legal entity, actually holds legal title or ownership of the store.

New subsection 93B(2) then makes explicit provision for the application of the provisions of Part 7 of the NTNER Act, and the operation of the community stores licensing scheme, to unincorporated associations and partnerships so far as they refer to the owner of a community store. Part 7 of the NTNER Act, as amended by this Schedule, provides for various notices to be issued to an owner of a community store, and for obligations or conditions or requirements or restrictions to be placed upon an owner of a community store, and permits or requires certain things to be done in respect of a community store. This subsection is intended to make explicit the circumstances in which relevant notices will be taken to be properly issued and obligations will be taken to be imposed, or things permitted or required to be done, in relation to a community store which is owned by an unincorporated association or partnership.

New paragraph 93B(2)(a) provides that a notice which is to be given to the owner of a community store is deemed to have been given to, and is therefore validly issued to, the owner of a community store if it is given to:

• in the case of an unincorporated association – any of the members of the committee of management of the association from time to time. (New subsection 93B(4) defines the term committee of management for the purposes of section 93B as being a body, however described, that governs, manages or conducts the affairs of the association.); and

• in the case of a partnership – any of the partners from time to time.

New paragraph 93B(2)(b) provides that anything done or not done by a member of the committee of management of an unincorporated association or, in the case of a partnership, a partner in respect of the partnership, is taken to have been done, or not done (as the case may be) by the relevant entity.
New paragraph 93B(2)(c) clarifies that obligations or requirements (including conditions) or restrictions that are imposed upon an owner of a community store, where the owner of the store is an unincorporated association or partnership, are taken to be imposed upon the members or partners of that relevant entity (as relevant).

Paragraphs 93B(2)(b) and (c) are intended to extend the scope of the provisions that apply to an owner that is an unincorporated association or partnership, to cover certain legal persons (being the individual management committee members or partners of the relevant entity), and to impose the relevant obligations, requirements or restrictions upon them, and so that relevant acts which are done, or not done, by the members of the committee of management or partners will be construed as being done by the owner in relation to the community store licensing scheme. Therefore, if one of the members of the committee of management or partners (as the case may be) breaches a condition of the community store licence in respect of a store owned by the association or partnership, then that breach will be taken to be a breach of the condition by the ‘owner’ of the community store. Similarly, any restrictions placed upon the payment of amounts to an owner of the store pursuant to new subsection 113(3) will apply to each of the members of the committee of management or partners where the owner is an unincorporated association or partnership.

The wording in new subsection 93B(2) also takes into account the potential for the membership of an unincorporated association or partnership to fluctuate or change from time to time. Therefore, for the avoidance of doubt, references to the members of the unincorporated association or partners of a partnership are to be construed as being the members or partners at the relevant time, rather than being fixed at any particular time. Similarly, to take into account potential changes in the composition of an unincorporated association or partnership, new subsection 93B(3) provides for continuity of the unincorporated association or partnership in the event that there is any change in the composition of the members or partners.

New section 93C of the NTNER Act makes explicit provision for the application of the provisions of Part 7 of the NTNER Act, and the operation of the community licensing scheme, to situations where there is more than one person who is the owner or the manager of a community store.

New subsection 93C(1) provides that if more than one person is the owner or manager of a community store, then Part 7 of the NTNER Act applies as follows:

- if a provision of Part 7 requires or permits a notice to be given to the owner of the community store, the notice may be given to any of the owners;

- if a provision of Part 7 requires or permits a notice to be given to the manager of the community store, the notice may be given to any of the managers;
• the obligations, requirements and restrictions imposed, and rights conferred, under Part 7, upon the owner of the community store are taken to be imposed or conferred upon each owner;

• the obligations, requirements and restrictions imposed, and rights conferred, under Part 7, upon the manager of the community store are taken to be imposed or conferred upon each manager.

Registrar

Item 6 inserts a new defined term, Registrar, into section 3 of the NTNER Act. The term is expressed to have the same meaning as in the Commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006 (the CATSI Act). The new definition is relevant to new section 111, inserted by item 49 of this Schedule.

New section 111 provides that, if the Secretary has required an owner of a licensed community store (where that owner is incorporated under the Northern Territory Associations Act) to become registered by a specified day under the CATSI Act and the owner has not become registered by that day (or a later day agreed by the Secretary) the Secretary may revoke the community store licence. However, the Secretary must not revoke a licence if the Secretary is satisfied that it was not reasonably practicable in the circumstances for the owner to become registered by the relevant day. In this regard, the Secretary will have regard to any responses received from the owner by the response day, any views expressed by the Registrar, and any other matter the Secretary considers relevant.

Community store

Item 9 removes current paragraph (a) from existing subsection 92(1) of the NTNER Act (which sets out the meaning of the defined term community store), and replaces it with a new requirement. The current requirement is that one of the main purposes of the business is the provision of grocery items and drinks. The new requirement, introduced by this item, will be that the Secretary is satisfied that the business is a key source of food, drink and grocery items for an Indigenous community.

In very remote communities the local store may be the only source of food and there may be no other store within hundreds of kilometres. Weather and road conditions may temporarily cut communities off from access to alternative food sources. Therefore, the way community stores operate and the quality of the food, drink and grocery items that they provide are critical to the Australian Government’s efforts to improve the lives of Indigenous people in the Northern Territory. This revised definition of a ‘community store’ covers those businesses which are considered by the Secretary to be a main, or important, supplier of food, drink and grocery items for an Indigenous community located in certain areas or places in the Northern Territory.
Existing paragraph 92(1)(b) provides that the business must be carried on: at premises in a prescribed area; or at premises in the Northern Territory that are specified by the Minister under subsection 123(2) of the NTNER Act; or at premises in an area or place in the Northern Territory that is specified by the Minister under subsection 123(1) or (2) of the NTNER Act (and which is not excluded under subsection 123(3) or 123(4)).

Item 10 makes a further technical change to the definition of community store in existing section 92 of the NTNER Act, by replacing the word ‘paragraph’ with ‘subparagraph’ at subparagraphs 92(1)(b)(ii) and 92(1)(b)(iii).

Item 11 repeals existing paragraphs 92(2)(a) and 92(2)(b) of the NTNER Act. Those paragraphs currently provide, respectively, that a business which is solely a takeaway food shop or fast food shop (including such a shop at which food could be consumed on the premises) or a roadhouse is not a community store for the purposes of the NTNER Act. The paragraphs have been repealed because it is intended that fast food shops, takeaway food shops and roadhouses be able to be subject to the community stores licensing scheme. The community stores licensing scheme will apply to such a business if the Secretary is satisfied that the business is a ‘key source’ of food, drink and grocery items for an Indigenous community and it is carried on at relevant premises.

Assessable matters

Item 12 repeals subsection 93(1) of the NTNER Act, which provides a definition of assessable matters in relation to a community store and replaces it with a new definition of assessable matters.

The Secretary, in making certain licensing decisions under Part 7 of the NTNER Act in relation to a community store will be required to have regard to the specified ‘assessable matters’ (for example, under sections 94, 97, 103, 106 and 107). Authorised officers will also be required to have regard to the assessable matters in conducting assessments (under section 94). The assessable matters are relevant to the provision of food security and high quality community store services to Indigenous communities. Subsection 93(1) sets out the assessable matters. The changes made to subsection (1) modify the descriptions of existing assessable matters and add further assessable matters which are more explicit and which make the assessment process more transparent. There are to be nine assessable matters, as follows:
Whether the community store makes, or will make, available a sufficient quantity and range of safe and good quality food, drink and grocery items to meet the nutritional and related household needs of each Indigenous community it services or may service

This is intended to confer upon the Secretary and authorised officers the capacity to consider the quality, quantity and range of food, drink and grocery items which will be available from a store. In particular, consideration may be given to whether a store will be able to supply merchandise to meet the nutritional and related household needs of Indigenous communities it services or may service. The range of grocery items taken into account may include household supplies such as foodstuffs, cleaning, personal hygiene and cooking products. Such products are of importance to the overall health and wellbeing of the residents of the Indigenous community which is serviced, or may be serviced, by the community store.

The capacity of the manager to promote, and the manager’s promotion of, better nutritional outcomes through methods including, but not limited to:

(i) stock placement and store layout; and
(ii) nutritional displays and demonstrations

This is intended to confer upon the Secretary and authorised officers the capacity to take into account product placement within a store, and how and where nutritional food, drinks and grocery items are placed, displayed and promoted. The placement of stock and displays, and the conduct of demonstrations and store layout are all important factors influencing customer buying habits and assist in promoting the sale of particular products.

The quality of the retail management practices of the manager in relation to matters including, but not limited to, the following:

(i) stock management;
(ii) adequacy of stock storage;
(iii) stock pricing methodology;
(iv) sustainable management of store infrastructure;
(v) point of sale management;
(vi) the practices of the store in relation to maintaining cleanliness and hygiene;
(vii) the practices of the store in relation to ensuring the safety of its customers and employees;
(viii) freight arrangements

This is intended to confer upon the Secretary and authorised officers the capacity to take into account the retail management practices of the manager of a community store, which may include an assessment of the stock management practices of the store, including the adequacy of stock storage and whether the methods used to manage the stock promote efficient and reliable stock control and further food security objectives.
The examination of retail practices may include consideration of the pricing strategies of the store, to ensure that the pricing methodology supports the sustainable operation of the store and promotes food security objectives, particularly where competition is lacking. The assessment of retail practices may also take into account freight arrangements, point of sale management and whether the store has policies and procedures in place to uphold cleanliness and hygiene at the store and ensure the safety of the store’s customers and employees.

Whether the financial practices of the owner and manager of the community store support the sustainable operation of the store, including, but not limited to, in relation to the following:

(i) financial accounting practices;
(ii) budgeting procedures;
(iii) creditor and debtor management;
(iv) cash and assets management;
(v) procurement practices;
(vi) insurance arrangements;
(vii) management of employment arrangements

This is intended to confer upon the Secretary and authorised officers the capacity to take into account the financial practices of a store to ensure the store is operated sustainably, transparently and accountably and is solvent. This may include an assessment of accounting practices, cash and assets management and procurement practices of the store. The financial assessment may also consider the store’s budgeting policies and creditor and debtor management. The assessment may also include the adequacy of insurance arrangements at the store and whether there is adequate management of employment arrangements at the store. These factors are all important in ensuring the ongoing financial sustainability of a store.

The character of the manager, employees and other persons associated with carrying on the business of the community store, including, but not limited to, whether the manager, employees or other persons have a criminal history

This is intended to confer upon the Secretary and authorised officers the capacity to take into account the character of the manager, employees and other people associated with carrying on the business of a store. The character and suitability of these people is relevant to the sustainable operation of stores as such people are integral to the business ethics and practices of a store. The assessment may involve consideration of whether customers, owners, suppliers and the general operation of the store could be at risk of being subject to inappropriate behaviour (such as intimidating behaviour and inducement to act inappropriately) or illegal activities (such as fraudulent, dishonest or deceptive conduct, supply of illegal or banned substances, or stolen goods).
The decision-maker would consider in each case matters such as: the relevance of the conduct to the responsibilities of a person working in or associated with the carrying on of the business of the store; the seriousness of the conduct; and how recently the conduct occurred. Subsection 93(5) provides that any spent convictions as defined under Part VIIIC of the *Crimes Act 1914* would not be taken into account.

The business structure and governance practices of the community store

This assessable matter is intended to confer upon the Secretary the capacity to take into account the business structure and governance practices of a community store including whether the store is supported by high quality governance practices and whether decisions in relation to the store are made transparently and accountably, with community input, as appropriate. This may include an examination of whether there is an appropriate separation of the store’s business activities from other business, organisational or personal interests in order to form a clear understanding of the store’s performance and viability. The Secretary will also have the capacity to assess business structures to ensure that these do not put the sustainable management of the store at risk. This assessment should ensure that the financial management of any non-store related interests which may have material links to the business of the store does not put the satisfactory operation of the store at risk.

The community store’s capacity to participate in, and (if applicable) the community store’s record of compliance with the requirements of, the income management regime

The operation of the income management arrangements under Part 3B of the Social Security Administration Act may involve the expenditure of a welfare payment recipient’s income managed funds at a community store — for example, through the use of accounts held by the store, or vouchers or stored value cards which can be used at the store — to obtain food, drinks, groceries and other goods at the store.

The Secretary and authorised officers will be able to consider whether a community store has the capacity to participate in the income management arrangements under Part 3B of the Social Security Administration Act. If applicable, the community store should be able to demonstrate a sound record of compliance with the requirements of the income management regime, or that it has the ability to participate in the income management regime, for example as demonstrated by its administrative and record-keeping practices and technical systems.
Matters relating to food security specified by the Minister under subsection 125(2)

This assessable matter is intended to confer upon the Minister the capacity to take into account further assessable matters which relate to food security (as defined in section 91B) as specified by legislative instrument made under subsection 125(2). This gives flexibility to add further assessable matters if more are identified at a future point in time.

Any other matter relating to food security that the Secretary considers relevant

This assessable matter is intended to confer upon the Secretary the ability to take into account any other matter that is not explicitly addressed in the assessable matters, provided the matter is relevant to food security.

Item 13 amends existing subsection 93(2) of the NTNER Act to provide that, in considering whether to grant a community store licence, the Secretary may consider the assessable matters (specified in subsection 93(1)) as they apply to a community store at the time of the consideration, or as the person proposes they will apply in the future in relation to a community store. The amendment does not introduce any additional considerations: the effect of it is to modify the wording of existing subsection 93(2) (which currently refers to a store operator) so the provision is capable of applying in relation to a store owner.

Item 14 makes a minor amendment to existing subsection 93(3) of the NTNER Act to remove the reference to the ‘transfer’ of a community store licence. As a community store licence will be held by a store owner, it will no longer be necessary to transfer licences between operators. As a change in ownership of a store is likely to be a relatively infrequent occurrence, if the ownership of a store does change, and the new owner requires a licence, the Secretary may decide whether to grant a licence to the new owner under section 97. This is expected to reduce the administrative burden associated with changes in management.

Item 15 adds new subsection 93(4), to existing section 93 of the NTNER Act. New subsection 93(4) provides that the Secretary may, by written notice given to the manager, an employee of the store or another person associated with the carrying on of the business of the community store, request such people to give written consent to enable the Secretary to check their criminal record for the purposes of Part 7. Paragraph 93(1)(e) includes, as part of the assessable matters, an assessment of the character of the manager, employees and other people associated with carrying on the business of the store. Subsection 93(5) provides that any spent convictions as defined under Part VIIC of the Crimes Act 1914 would not be taken into account.
Object of the community stores licensing scheme

Item 7 inserts a new Division into Part 7 of the NTNER Act, Division 1A, titled ‘Object of Part’.

New section 91A, in new Division 1A, outlines the object of Part 7 of the NTNER Act. The purpose of new section 91A is to set out expressly the object of Part 7 of the NTNER Act, which is to enable special measures to be taken for the purpose of promoting food security for certain Indigenous communities in the Northern Territory. Subsection 91A(2) further provides that the Part is intended to enhance the contribution made by community stores in the Northern Territory to achieving food security (as defined in section 91B) for certain Indigenous communities.

Assessment of community stores

Item 17 repeals existing subsections 94(1) and 94(2) of the NTNER Act and replaces them with new provisions dealing with the assessment of a community store.

New subsection 94(1) permits the Secretary, on his or her own initiative, to require an authorised officer to assess a community store for the following purposes:

- deciding whether or not a community store licence is required to be held in relation to a community store; or
- deciding whether to grant, revoke, vary or impose conditions upon a community store licence.

New subsection 94(2) sets out matters an authorised officer must have regard to in assessing a community store.

Under new paragraph 94(2)(a), if an assessment is conducted for the purpose of deciding whether or not a community store licence is required to be held in relation to a community store, the authorised officer must have regard to the objective of promoting food security in an Indigenous community the community store services or may service. If an assessment is for the purpose of deciding whether to grant, revoke, vary or impose conditions upon a community store licence, then paragraph 94(2)(b) requires the authorised officer to have regard to the assessable matters specified in section 93.

Item 18 amends the wording of existing subsection 94(4) of the NTNER Act as a consequence of the removal of the term ‘operator’ and the fact that, under section 96, it will be the owner of a community store, or a person acting on the owner’s behalf, who may apply for a community store licence in relation to the community store. Subsection 94(4) provides that the Secretary may require an authorised officer to assess a community store whether or not the owner, or a person acting on the owner’s behalf, has made an application for a licence to operate a community store under section 96 of the Act.
Item 19 repeals section 95 of the NTNER Act and replaces it with a new section 95 which provides for the notice requirements in relation to the conduct of an assessment of a community store.

Subsection 95(1) provides that section 95 is to apply if an assessment of a community store is to be or is being conducted.

Subsection 95(2) provides details of the notice that the Secretary, or authorised officer responsible for conducting the assessment, must give to the owner and the manager of a community store if an assessment is to be, or is being, conducted. Under new subsection 95(2), the notice must advise:

- that the assessment is to be, or is being, conducted;
- the name of the authorised officer or officers who are conducting, or will conduct, the assessment;
- the purpose of the assessment;
- the matters to which the authorised officer is to have regard in conducting the assessment.

If entry to the community store, or access to material or documents, is required for the purposes of an assessment, then new subsection 95(3) provides that notice of that entry or access must be given — either in the notice issued under subsection 95(2) or in another notice — at least seven working days before entry or access is required, unless a shorter period of time has been agreed with the owner or the manager.

The purpose of new subsection 95(4), which provides that a store need not be visited or entered for the purpose of conducting an assessment, is to clarify that physical visits and entry to the store for the purpose of conducting an assessment may not be required for all assessments.

Requirement for community store licences

Item 20 inserts a new Division after existing Division 2 of Part 7 of the NTNER Act entitled ‘Division 2A – Secretary may require community store licences’, which contains a new section 95A.

New subsection 95A(1) permits the Secretary, at any time, to consider whether a community store licence is required in respect of a community store. A community store licence will generally be required for a community store (as defined in section 92) in situations where the community stores licensing scheme is expected to promote the object of Part 7 (see section 91A). The intention of new section 95A is to ensure that those owners who are capable of operating the store in a satisfactory manner, having regard to the assessable matters at subsection 93(1) of the Act, will be licensed.
However, to take account of certain situations where the requirement to hold a licence would impose an unreasonable burden on the operation of a store and undermine the food security objectives of the community stores licensing regime, the Secretary may, under subsection 95A(2), decide that a community store licence is not required in relation to a community store. Participation in the income management regime would not be put in jeopardy in such a situation.

Written notice of the Secretary’s decision about whether or not a community store licence is required in respect of the store must be given to the owner and the manager of the store under subsection 95A(2). The note under subsection 95A(2) explains that the Secretary may vary or revoke a notice given under subsection 95A(2) under subsection 33(3) of the Acts Interpretation Act.

Subsection 95A(3) provides that the Secretary must not decide that a community store licence is required unless the Secretary is satisfied that to do so is reasonably likely to promote food security for an Indigenous community that the community store services or may service. That is, the Secretary must not require a store to have a community store licence unless having such a licence would encourage a reasonable ongoing level of access to a range of food, drink and grocery items that is reasonably priced, safe and of sufficient quantity and quality to meet nutritional and related household needs.

Before making a decision under section 95A, subsection 95A(4) requires the Secretary to have regard to the circumstances, concerns and views of those people who are being serviced by the community store and the object of Part 7 of the NTNER Act (see section 91A).

A decision by the Secretary under section 95A that a community store licence is required will be reviewable by the Administrative Appeals Tribunal under new section 127A.

**Licensing of community store**

**Item 21** repeals existing subsection 96(1) of the NTNER Act and substitutes a provision which provides that the owner of a community store, or someone acting on the owner’s behalf, may apply for a community store licence in relation to a community store. This provision clarifies the application process, given the removal of the concept of a store operator under **item 4** and the fact that owners, as defined in sections 93A and 93B, will be licensed under the community stores licensing scheme. The heading to section 96 is also amended.

**Item 22** repeals existing subsection 97(1) of the NTNER Act and inserts a new subsection 97(1) to reflect the removal of the concept of a ‘store operator’ holding a licence and the issuing of licences to store owners. The new subsection provides for two scenarios under which the Secretary must decide whether or not to grant a community store licence to the owner of a community store.
The first situation arises if a store owner, or a person acting on the owner’s behalf, has made an application for a community store licence under section 96.

The second situation arises where, for the purposes of section 95A, the Secretary has determined that a community store licence is required and has issued a notice under that section which is in effect and which advises that a community store licence is required, but a licence is not in effect at the time the notice was given.

**Item 23** makes minor amendments to existing subsections 97(2) and 97(3) of the NTNER Act to reflect the issuing of a community store licence to the owner of a store.

**Item 24** repeals existing paragraph 97(3)(b) of the NTNER Act and substitutes a new paragraph 97(3)(b), making a technical amendment that reflects the removal of the concept of a store ‘operator’ holding a licence and the fact that licences will be granted to store owners. The paragraph provides for the Secretary, prior to granting a community store licence, to have regard to any assessment of the community store under section 94 in order to satisfy himself or herself that the community store or stores to which the licence will relate will be operated in a satisfactory manner.

**Item 25** makes minor amendments to existing paragraph 97(4)(a) to remove references to an ‘operator’ of a community store, in order to reflect the removal of the concept of a store operator holding a licence and the fact that licences will be issued to store owners. The paragraph provides that the Secretary may refuse to grant a community store licence to a person where that person, or another person, unreasonably withholds consent for an authorised officer to enter the premises of the community store as required by section 118, or unreasonably refuses to provide documents, material or assistance as required by section 119.

Decisions made by the Secretary under section 97 are reviewable by the Administrative Appeals Tribunal under new section 127A.

**Item 26** adds a new subsection 97(5), which requires the Secretary to have regard to the circumstances, concerns and views of those people who are being serviced by the community store and the object of Part 7 of the NTNER Act (see section 91A) before making a decision under section 97.

**Item 27** makes a minor amendment to existing section 98 of the NTNER Act to reflect the fact that community store licences will be issued to the owner of a store.
Existing section 98 provides that a community store licence may be expressed to relate to a specified store or all community stores. As licences are to be issued to owners, the circumstance of one person owning all of the community stores in the Northern Territory is not expected to arise. The amended provision makes it clear that a community store licence may be expressed to relate to a specified community store or specified community stores. An owner can hold a licence for more than one store, where they own more than one store. (Under the previous legislation, an operator could hold a licence for more than one store if they operated more than one store.)

**Item 28** repeals existing section 99 of the NTNER Act and replaces it with a new section setting out the processes that must be followed before the Secretary refuses to grant a community store licence.

If the Secretary proposes to refuse to grant a community store licence, new subsection 99(1) requires the Secretary to notify the owner and the manager of the proposed refusal. They must be given an opportunity to provide written responses on the proposed refusal, and any other matters specified in the notice.

If a notice, which has been given under section 95A, is in effect in relation to the store, requiring a community store owner to hold a licence for the store, then the notice under new subsection 99(1) must also state that, if a community store licence is not in effect by the specified day, the community store will be ineligible to participate in the income management arrangements under the social security law after that day. All written responses which are received by this time must be taken into account before a decision can be made under subsection 99(1).

New subsection 99(2) sets out the requirements for the notice. The notice must state the reasons for the proposed refusal (for example, identify a particular assessable matter which is of concern) and invite written responses. The notice must also specify the day by which responses must be received and specify the address at which responses are to be lodged.

New subsection 99(3) requires that the recipient of a notice be given at least seven working days after the day on which the notice is given to provide a response to the Secretary.

Subsection 99(4) provides that a notice issued under subsection 99(1) must advise that, if a community store licence is not in effect by a specified day, or a later day agreed to by the Secretary, then the community store will be ineligible to participate in the income management arrangements after that day. This subsection will apply only where the community store has been assessed for the purposes of deciding whether or not to grant the licence and a notice under section 95A that a licence is required has been issued and is in effect.
New subsection 99(5) provides that the Secretary may refuse to grant a community store licence only if the people required to be given a notice under subsection 99(1) have been given such a notice and the Secretary has considered all written responses received from those people by the day specified under paragraph 99(2)(c).

New section 112, inserted by item 49 of this Schedule and discussed in more detail below, deals with the circumstances in which a store will not be eligible to participate in the income management arrangements following the issuing of a notice under subsection 99(1).

Item 29 repeals subparagraph 100(b)(iii) of the NTNER Act as a consequence of the repeal of section 109 by item 48 of this Schedule, which repeals the provision dealing with the surrender of licences.

Items 30 and 31 make minor amendments to paragraph 101(1)(a) and subsection 101(2) of the NTNER Act to reflect the recognition of the roles played by store owners and store managers in the operation of a community store.

Subsection 101(1), as amended by item 30, requires a notice of a decision to grant a community store licence to be sent to the owner and manager, with a copy of the licence attached. The reason for issuing a notice to the owner and the manager is that they both (if they are separate people) have responsibilities in relation to the licensing and operation of the community store.

Similarly, under subsection 101(2) as amended by item 31, if the Secretary decides to refuse to grant a community store licence, the Secretary must give written notice of the decision to the owner and the manager of the community store.

**Conditions of community store licences**

Item 32 makes a minor amendment to existing paragraph 102(a) of the NTNER Act (which refers to certain conditions that a community store licence is subject to), to give effect to the fact that licences will not be transferable.

Items 33, 34 and 35 make changes to existing section 103 of the NTNER Act, which deals with licence conditions that may be specified or imposed.

Item 33 is a technical amendment to omit the numeral ‘(1)’ from existing subsection 103(1) of the NTNER Act to reflect the removal of subsection 103(2) by item 35.

Item 34 inserts new paragraphs (ba) and (bb) in existing section 103.
New paragraph 103(ba) provides that licence conditions that are specified by legislative instrument or imposed by the Secretary under section 102 may, among other things, relate to the requirement to notify a change of manager or owner (whether permanent or temporary) of the community store.

New paragraph 103(bb) provides that licence conditions that are specified by legislative instrument or imposed by the Secretary under section 102 may, among other things, relate to the requirement to notify a change in the composition or structure of the owner.

**Item 35** repeals existing subsection 103(2), which gave the Secretary the power to impose a licence condition requiring the ‘operator’ of a community store to take such steps as specified in the conditions of the licence in relation to appointing an external or independent manager (however described) of the community store. This subsection is no longer required as licences will be granted to the owner of a store, who will be responsible for ensuring the store is managed in a satisfactory manner.

**Item 36** makes a minor change to existing section 104 of the NTNER Act by replacing the words ‘operate the store’ with the words ‘ensure the store is operated’. This recognises the fact that the holder of the licence, that is, the owner of the community store (as defined in new sections 93A and 93B) will not necessarily be a person who is involved in the day to day management of the store.

**Item 37** amends existing subsection 105(1) of the NTNER Act, which deals with conditions about monitoring and audits, by replacing the words ‘holder of the licence’ with ‘owner and the manager of the community store’ to take account of the separate responsibilities of owners and managers in the operation of a store. Either person may have control over the premises or documents and materials relating to the store to which access may be required for the purpose of auditing and monitoring compliance with community store licence conditions.

**Revocation and variation of community store licences**

**Items 38, 39 and 40** make minor changes to existing section 106 of the NTNER Act, which deals with the revocation of community store licences.

**Item 38** makes a minor amendment to existing subsection 106(1) by replacing the words ‘holder of a community store licence’ with the words ‘owner and the manager of a community store’. This change reflects the fact that, while licences will be issued to the owner of a store, any decision to revoke the store licence may impact upon the manager of the store.
Item 39 makes a minor amendment to paragraph 106(1)(b) by replacing the words ‘licence holder’ with the words ‘owner or the manager’ and provides that the Secretary may, by notice in writing given to the owner and manager of a community store, revoke the licence if the Secretary believes on reasonable grounds that the owner or the manager has committed an offence against the NTNER Act.

The notification processes specified under new sections 108 and 108A of the NTNER Act must be undertaken before a licence is revoked. New section 127A of the NTNER Act allows for an application to be made to the Administrative Appeals Tribunal for review of a decision by the Secretary to revoke a community store licence.

Item 40 adds a note at the end of subsection 106(1) to indicate that a community store licence may also be revoked under new section 111 of the NTNER Act. Section 111 deals with the revoking of a community store licence in particular circumstances if the owner of the community store does not become registered under the CATSI Act.

Items 41, 42, 43, 44, 45 and 46 make amendments to existing section 107 of the NTNER Act, which deals with the variation of community store licences.

Item 41 amends subsection 107(1) by replacing the term ‘licence holder’ with the phrase ‘owner and the manager’ and provides that the Secretary will have discretion under subsection 107(1) to vary a community store licence by notice in writing given to the owner and the manager at any time on the Secretary’s own initiative, or if the owner, or a person acting on their behalf, applies for a variation.

The notification process specified under new sections 108 and 108A of the NTNER Act must be undertaken before a licence is varied. New section 127A of the NTNER Act allows for an application to be made to the Administrative Appeals Tribunal for review of a decision by the Secretary to vary a community store licence.

Item 42 removes the term ‘licence holder’ from paragraph 107(1)(b) and replaces it with the phrase ‘owner, or a person acting on the owner’s behalf’. As a consequence, the Secretary may vary a community store licence under paragraph 107(1)(b) by notice in writing given to the owner and the manager if the owner, or a person acting on the owner’s behalf, applies for a variation.

Item 43 amends existing paragraph 107(3)(c) of the NTNER Act by providing for the Secretary to vary a community store licence to shorten the period of effect of the licence.
**Item 44** inserts a new subsection 107(4A) into the NTNER Act, which excludes applications for a variation to shorten the period of effect of a licence from the application of subsection 107(4) of the NTNER Act. This is to avoid doubt that the Secretary may exercise this power even where the result is a store no longer continuing to operate as a licensed community store. The Secretary may vary a community store licence to shorten the period of effect of the licence only if there has been an application by the owner, or a person acting on the owner’s behalf, to shorten the licence period.

**Item 45** amends subsection 107(6) to provide that a variation to shorten the period of effect of a community store licence may take effect on a date earlier than the date on which the notice is given.

**Item 46** amends paragraph 107(7)(b) by replacing the phrase ‘holder of the licence’ with the phrase ‘owner or manager of the community store’ and provides that the Secretary may refuse to vary a community store licence if the owner or the manager of the community store does not give the Secretary sufficient information to make an informed decision. New section 127A of the NTNER Act allows for an application to be made to the Administrative Appeals Tribunal for review of a decision by the Secretary to refuse to vary a community store licence.

**Item 47** repeals existing section 108 of the NTNER Act and replaces it with two new provisions, sections 108 and 108A, which provide for revised procedures to be followed before the Secretary varies, revokes, or refuses to vary a community store licence.

New subsections 108(1) and 108(2) provide for notification to be given to the owner and the manager of a community store in situations where the Secretary proposes to:

- vary a community store licence;
- revoke a community store licence under section 106; or
- refuse to vary a community store licence where an application is made under paragraph 107(1)(b) for the licence to be varied.

New subsection 108(2) of the NTNER Act requires the Secretary to notify the owner and the manager of the community store of the proposed variation, revocation or refusal to vary the licence.

New section 108A of the NTNER Act sets out the requirements for a notice given under section 108.
Subsection 108A(1) provides that the notice given under subsection 108(2) must: specify the reasons for the proposed variation or revocation of, or refusal to vary, the community store licence; invite the owner and manager to provide written responses in relation to the matters specified in the notice; specify the deadline by which responses are to be given; and specify an address where responses are to be lodged.

Subsection 108A(2) requires that the recipients of the notice be given at least seven working days after the day on which the notice is given in which to provide a response.

Subsection 108A(3) provides that if an application is made for a variation to a licence that would have the effect, if implemented, of extending the period of effect of the community store licence, and the community store has been assessed for the purpose of deciding whether to extend its period of effect, then the notice given under subsection 108(2) of the NTNER Act must notify that, if the period of effect of the community store licence is not extended, the community store will not be eligible to participate in the income management arrangements after the revocation takes effect.

If a community store has been assessed for the purpose of deciding whether or not to revoke the community store licence, and the Secretary proposes to revoke a community store licence, then subsection 108A(4) provides that the notice given under subsection 108(2) of the NTNER Act must notify that, if the licence is revoked, the community store will not be eligible to participate in the income management arrangements from the day after which the licence ceases to be in effect.

Subsection 108A(5) provides that the Secretary must consider all written responses received by the response day (paragraph 108A(1)(c)) and ensure the persons required to be given a notice under subsection 108(2) have been given such a notice before varying, revoking or refusing to vary a community store licence.

New section 112 of the NTNER Act deals with the circumstances in which a store will not be eligible to participate in the income management arrangements following the issuing of a notice under subsection 108A(4) or 108A(5).

**Surrender and transfer of community store licences**

**Item 48** repeals Subdivision D of Division 3 of Part 7 (existing sections 109 to 111) which set out the formalities for the surrender and transfer of licences.

With the introduction of legislative provisions which specifically link certain community stores licensing decisions with a store’s eligibility to participate in the income management arrangements, it is no longer appropriate to include a provision for the surrender of a licence, unless potential consequences arising in relation to the store’s participation in the income management arrangements are provided for.
However, if a licence-holder wishes to withdraw from the community stores licensing scheme, an application can be made under section 107 of the NTNER Act for a variation to the period of effect of the licence. Under section 107, the Secretary may decide whether or not to vary the licence to shorten its period of effect. Having agreed to vary a licence to shorten its period of effect, the Secretary may exercise powers under section 95A of the NTNER Act, at any point in time, to determine whether a licence is required to be held by the owner of the community store and to issue a notice advising the store owner and the manager that the store will not be eligible to participate in the income management arrangements if a community store licence is not in place in respect of the store (under subsections 97(1) and 99(4) of the NTNER Act) by a specified date.

If a community store licence is required to be held by the owner of the community store in respect of the store and a notice has been issued under subsection 99(4), and there is no licence in effect in respect of the store by the specified day, then new section 112 of the NTNER Act deals with the circumstances and period for which the community store will not be eligible to participate in the income management arrangements.

Licences will not be transferred between persons. As community store licences will be held by owners (as defined in sections 93A and 93B), the need to license a new owner is expected to be a relatively infrequent occurrence. Under the previous scheme, transfer provisions were required to deal with the more frequent occurrence of a change in operator (usually managers). These new arrangements will assist in reducing the administrative workload associated with personnel changes at licensed community stores.

**Requirement to register under the CATSI Act**

**Item 49** repeals existing Division 4 of Part 7 of the NTNER Act (sections 112 to 115 inclusive), which dealt with the acquisition of community stores by the Commonwealth, and substitutes a new Division 4 titled ‘Requirement to register under the Corporations (Aboriginal and Torres Strait Islander) Act 2006’. The requirements under this Division apply where the owner of the community store is incorporated under the Northern Territory Associations Act.

The repeal of existing Division 4 of Part 7 removes the powers that were conferred on the Commonwealth under the NTNER Act to acquire a community store’s eligible assets and liabilities.

New Division 4 of Part 7 (sections 110 and 111) addresses the circumstances and process by which the Secretary may notify the owner of a community store that the owner is required to become registered under the CATSI Act.
New Division 4 assists in improving the governance and capacity of Northern Territory Indigenous corporate associations that own community stores and safeguards food security through stores owned by such corporations. Poor governance practices and resourcing issues have been a recurring problem in relation to community stores and corporate governance has been identified as a key area for improvement in Indigenous communities. The Northern Territory Associations Act is more suitable for associations which are small, community based groups than significant trading entities. The CATSI Act provides an incorporation framework which is tailored to the particular risks and requirements of the Indigenous corporate sector. The Act recognises the particular importance of maintaining essential services operated by Indigenous corporations which are located in remote or very remote areas. Community stores owners that are incorporated under the CATSI Act will be covered by the special provisions that apply to an ‘essential service’ under the CATSI Act.

Incorporation under the CATSI Act confers a range of benefits including powers for early intervention to remedy problems relating to the provision of an essential service, such as community stores, which are not available under the Northern Territory Associations Act. These powers include a provision to place a CATSI Act incorporated entity, such as the owner of a store, under special administration. Special administration enables the Registrar (as defined in section 3 of the NTNER Act) to provide early proactive regulatory assistance when a corporation experiences governance or financial difficulties. Unlike a receivership, voluntary administration or liquidation, the special administration process under the CATSI Act is not driven by creditors and its prime focus is on the best interests of the members and the corporation and to protect public funding and ensure the maintenance of essential services, such as remote stores.

The aim of the special administration process is to restore good operational order to the corporation, improve governance and the financial position of the corporation and build the capacity of the members and future directors to run the corporation effectively. It therefore provides safeguards to assist the owner of a community store to continue in business and receive the support they need to secure the ongoing operation of the community store. The Office of the Registrar of Indigenous Corporations provides training and support to members of a corporation that is incorporated under the CATSI Act to build their capacity to meet their obligations.

New subsection 110(1) of the NTNER Act permits the Secretary to provide a notice to the owner and the manager of a community store, requiring the owner to become registered under the CATSI Act by a day specified in the notice.

Subsection 110(2) sets out the requirements for a notice given under subsection 110(1). Subsection 110(2) prohibits the Secretary from giving such a notice unless at the time the notice is given a community store licence is in effect and the owner of the community store is incorporated under the Northern Territory Associations Act.
If the Secretary issues a notice under subsection 110(1) requiring the owner of a community store to apply for registration under the CATSI Act, paragraph 110(3)(a) of the NTNER Act requires that the notice must advise the owner that if it does not become registered by the day specified in the notice (termed the ‘registration day’) then the Secretary may revoke the community store licence and the store will not be eligible to participate in the income management arrangements after the revocation takes effect.

Under paragraph 110(3)(b) of the NTNER Act, the notice is required to invite written responses, by a specified response date, from the owner and manager of the community store in relation to the requirement for the owner to become registered under the CATSI Act by the ‘registration day’. The note to subsection 110(3) mentions that the notice issued under subsection 110(1) is able to be revoked or varied by the Secretary. Subsection 110(4) requires the response date for responses to be no earlier than four weeks before the registration day.

The process of inviting responses under paragraph 110(3)(b) offer an owner the opportunity to provide information which may satisfy the Secretary that, despite reasonable steps being taken, it was not reasonably practicable in the circumstances for the owner to become registered under the CATSI Act. If the Secretary is satisfied it was not reasonably practicable in the circumstances for the owner to become registered under the CATSI Act by the specified day, or a later day agreed to by the Secretary, then the Secretary must not revoke the licence in accordance with subsection 111(4).

For example, an association that could not meet the Indigeneity requirement for CATSI Act registration would not be expected to change its membership in order to become registered.

New subsection 110(5) clarifies that a notice given under subsection 110(1) is not a legislative instrument. This subsection is merely declaratory of the law as the notice is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

New section 111 of the NTNER Act deals with the circumstances in which the Secretary may revoke the licence of a community store if the community store’s owner has been given a notice under subsection 110(1) requiring the owner to become registered under the CATSI Act by a specified day.

If the Secretary has given an owner and a manager of a community store a written notice under subsection 110(1), and the owner has not become registered under the CATSI Act by the registration day, or such later day as is agreed by the Secretary, then the Secretary may revoke the community store licence under subsection 111(1) of the NTNER Act by giving a written notice to the owner and the manager of the community store.
Subsection 111(2) provides that the revocation of a community store licence will take effect on the day on which the notice under subsection 111(1) is given, or on a later day specified in the notice. Subsection 111(3) requires the Secretary to consider all written responses provided by the store owner and manager which have been provided by the response date specified in the notice issued under subsection 110(1).

Under new subsection 111(4) of the NTNER Act, the Secretary must not revoke a licence under subsection 111(1), unless the Secretary is satisfied that it was not reasonably practicable in the circumstances for the owner to become registered under the CATSI Act by the registration day or such later day agreed to by the Secretary. In doing so, the Secretary must have regard to the following:

- any responses received from the owner by the response date;
- any views expressed by the Registrar; and
- any other matter the Secretary considers relevant.

Decisions by the Secretary under new section 111 to revoke a community store licence will be reviewable by the Administrative Appeals Tribunal under new section 127A of the NTNER Act.

Certain community stores not eligible to participate in income management

Item 49 also inserts a new Division into Part 7 of the NTNER Act, Division 4A, titled 'Certain community stores not eligible to participate in income management'.

New Division 4A of Part 7 of the NTNER Act (sections 112 and 113) deals with the circumstances in which a community store will not be eligible to participate in the income management arrangements established under Part 3B of the Social Security Administration Act and the consequences of a community store not being eligible to participate in these arrangements.

New section 112 of the NTNER Act, in new Division 4A, deals with the circumstances in which a store will not be eligible to participate in the income management arrangements following the issuing of a notice under subsection 110(1). There are three situations in which the provision will apply.
The first situation, provided for at paragraph 112(1)(a), is when a licence is not in effect by the required day following the issuing of a notice under subsection 99(4) in relation to the proposed refusal to grant a community store licence if a licence is required in relation to the store (new section 95A of the NTNER Act). A notice under subsection 99(4) will have advised that the store will not be eligible to participate in the income management arrangements if a community store licence is not in effect for the store by a specified day. Where this occurs, then subparagraph 112(2)(a)(i) provides that the community store is not eligible to participate in the income management arrangements from the day specified in the notice given under subsection 99(4) or a later day as agreed in writing by the Secretary.

The second situation, provided for at paragraph 112(1)(b), relates to the situation where an application has been made to extend the period of effect of a community store licence and the store has been assessed in relation to such a variation. In such cases, if a subsection 108A(3) notice has been issued advising that, if the period of effect of the community store licence is not extended, then the community store will not be eligible to participate in the income management arrangements, and the community store licence subsequently ceases to be in effect as a result of such a refusal to extend the period of effect of the licence, then subparagraph 112(2)(a)(ii) provides that the community store is not eligible to participate in the income management arrangements from the day on which the community store licence ceases to be in effect.

The third situation, provided for at paragraph 112(1)(c), is in relation to a proposed revocation of a community store licence, where a licence is to be revoked following a notice being issued under new subsection 108A(3) or subsection 110(1) of the NTNER Act, advising that, if the community store licence held in relation to the community store is revoked, the community store will not be eligible to participate in the income management arrangements. If the licence is subsequently revoked, then subparagraph 112(2)(a)(iii) provides that the community store is not eligible to participate in the income management arrangements from the day on which the community store licence is revoked.

New section 113 of the NTNER Act, also in new Division 4A of Part 7, details consequences which arise as a result of a store being ineligible to participate in the income management arrangements.

Paragraph 112(2)(b) of the NTNER Act provides that, in all three situations outlined above, the period during which a community store is not eligible to participate in the income management arrangements ceases the earlier of the day on which a community store licence comes into effect in relation to the community store or the day on which the Secretary gives a notice under section 95A that a community store licence is not required in relation to the community store.
Section 113 provides for the consequences of community stores not being eligible to participate in the income management arrangements during a period referred to in subsection 112(2). Subsection 113(2) provides that, if a community store is not eligible to participate in the income management arrangements for a particular period, the Secretary must take reasonable steps to ensure that a stored value card given to a person under section 123YE or 123YF of the Social Security Administration Act cannot be used to acquire goods or services from that community store during the period referred to in subsection 112(2) (being the period for which the community store is not eligible to participate in the income management arrangements).

Subsection 113(3) provides that, during the period referred to in subsection 112(2) (being the period for which a community store is not eligible to participate in the income management arrangements), the Secretary must not pay an amount to the owner or the manager of the community store under section 123YI or 123YJ of the Social Security Administration Act. If the Secretary has made a payment under one of those provisions to the owner or the manager of the store before the period referred to in subsection 112(2), and the community store is not eligible to participate in the income management arrangements, then subsection 113(4) provides that the Secretary must give the owner or the manager (if applicable) a notice under section 123ZH of the Social Security Administration Act, requiring the owner or manager to repay so much of the amount paid as has not been applied by the relevant account holder for the purposes of the acquisition of goods or services.

Item 50 makes a minor amendment to existing subsection 119(2) and (3) of the NTNER Act to remove the phrase ‘the operator of the community store, the occupier of premises of the store,’ from subsections 119(2) and 119(3) and replace them with the phrase ‘the owner of the community store, the manager of the store, the occupier of the premises of the store’ to reflect the fact that the concept of a store ‘operator’ is superseded by the introduction of the terms ‘owner’ and ‘manager’.

Section 119 of the NTNER Act empowers authorised officers to obtain access to records and assistance, and as subsection 119(1) provides, the subsection applies if an authorised officer is assessing a community store under section 94 of the NTNER Act.

Subsection 119(2), as amended, provides that the owner, the manager of the community store and the occupier of premises of the store, must, if requested, produce to an authorised officer, or any other person assisting the authorised officer, such documents and material as are reasonably necessary for the authorised officer to make the assessment. An offence attracting a penalty of 60 penalty units applies for non-compliance with this requirement.
In addition, the owner of the community store, the manager of the community store and the occupier of premises of the community store, must provide the authorised officer, or any other person assisting the authorised officer, with such assistance and facilities as are necessary and reasonable for making the assessment (per subsection 119(3)). An offence attracting a penalty of 10 penalty units applies for non-compliance with this requirement. The penalty of 10 penalty units is at the lower end of the scale.

Given that this item applies the offences to owners and managers, as newly defined in sections 93A and 93B, it will commence on the later of the following dates: 1 July 2010, and the 28th date after this bill receives Royal Assent.

**Interaction with other Commonwealth laws**

**Item 51** makes a technical amendment to existing section 122 of the NTNER Act to reflect the removal of subparagraph 122(2)(i) of that provision by item 52 of this Schedule.

**Item 52** repeals paragraph 122(2)(i) as a consequential amendment to the repeal of the previous section 112 of the NTNER Act by item 49 of this Schedule.

**Legislative instruments and consultation**

**Item 53** inserts a new section 123A of the NTNER Act, which sets out requirements for community consultation in relation to the making of legislative instruments under existing section 123 of the NTNER Act.

Subsection 123A(1) provides that, before the Minister can make a legislative instrument under section 123 relating to an area, place or premises, the Minister must ensure that information regarding the proposed making of the legislative instrument, and an explanation of the consequences which will arise from the making of that instrument, is made reasonably available to the people who are being, or would be, serviced by each business that may be a community store if the instrument were made.

Paragraph 123A(1)(b) provides that such people must have been given a reasonable opportunity to discuss the proposal to make the legislative instrument, and its consequences, with employees of the Commonwealth or such other people as the Minister thinks appropriate, and under subparagraph 123A(1)(b)(iii), be given a reasonable opportunity to discuss their circumstances, concerns and views as they relate to the proposal.

Subsection 123A(2) provides that the validity of an instrument made under section 123 of the NTNER Act will not be affected if there is a failure to comply with the consultation requirements outlined at subsection 123A(1).
Section 123B of the NTNER Act provides that before the Minister can make a legislative instrument under section 123 relating to an area, a place or premises, the Minister must have regard to four matters in determining whether or not to make the legislative instrument. These matters are:

**The number and geographic distribution of the Indigenous people that are being, or would be serviced by each business that may be a community store if the instrument were made**

The Minister must have regard to the number and geographic distribution of Indigenous people, not only within the community but in the surrounding area, who are being, or would be, serviced by each of the businesses that may become a community store if the instrument is made.

**Access for such people to alternative sources of food security**

The Minister must have regard to whether those Indigenous people who are being, or would be serviced, by each business that is reasonably likely to become a community store if the instrument is made, have reasonable access to alternative sources of food security. The term ‘food security’ is defined in new section 91B of the NTNER Act.

**Whether there is evidence that existing arrangements have resulted in, may have led to or may lead to, unacceptable risks to food security for such people**

The Minister must have regard to whether the current arrangements have caused or led to, or may lead to, unacceptable risks to food security (as defined in section 91B) for those Indigenous people who are being or will be serviced by the businesses that are reasonably likely to be a community store if the instrument is made.

**Any discussions of the kind referred to in paragraph 123A(1)(b)**

The Minister must have regard to any discussions provided for at paragraph 123A(1)(b) of the NTNER Act.

**Any other matter that the Minister considers relevant**

This is intended to give the Minister capacity to take into account any other matter that is not explicitly addressed in section 123B.

**Items 54 and 56** make minor amendments to existing section 125 of the NTNER Act, by removing the word ‘transfer’ from that paragraph, as licences will not be transferred between persons. If the ownership of a store changes and the new owner requires a licence, a new licence may be granted to the new owner following an assessment. A change in manager no longer necessitates a transfer of licence, but can be dealt with under licence conditions.
Item 55 amends existing section 125 of the NTNER Act, which provides for the Minister to issue guidelines about assessable matters. As a consequence of the changes, the Minister will have the power to determine further assessable matters by legislative instrument made under subsection 125(2) of the NTNER Act, provided they are connected to food security. This gives flexibility to add further assessable matters if more are identified at a future point in time.

Item 57 repeals existing section 126 of the NTNER Act, which provided for decisions made under the income management regime (being ones which may result in a payment or benefit being made to or received by the owner or the operator of a community store) to have regard to whether or not the operator of the community store held a community store licence. The existing section is being repealed as a consequence of the introduction of new sections 110, 111 and 112 of the NTNER Act, which specify circumstances under which a store may become ineligible to participate in the income management arrangements.

Item 58 inserts new section 127A at the end of Division 6 of Part 7 of the NTNER Act to provide for external review by the Administrative Appeals Tribunal of certain decisions of the Secretary under the community stores licensing scheme.

Section 127A allows for an application to be made to the Administrative Appeals Tribunal for review of the following decisions:

- a decision under section 95A, that a community store licence is required;
- a decision under section 97, to refuse to grant a community store licence;
- a decision under section 106 or section 111, to revoke a community store licence;
- a decision under section 107, to vary a community store licence on the Secretary’s own initiative; and
- a decision under section 107, to refuse to vary a community store.

Amendments to the Social Security Administration Act

Items 59 to 63 insert notes into Part 3B of the Social Security Administration Act to assist readers by directing them to relevant provisions in the NTNER Act which impact upon a store’s eligibility to participate in the income management arrangements.
Part 2 – Transitional provisions

Item 64 provides that Part 2 of Schedule 6 is to apply to those community store licences (known as preserved licences) which are in force at the time of commencement of this item (on 1 July 2010).

Subitem 65(1) provides that a preserved licence will continue in force under the ‘new law’ (as defined in item 67, to mean the NTNER Act as in force immediately after the commencement of item 67 of this Schedule) and is taken, on and from commencement of this item, to have been granted under section 97 of the ‘new law’.

Subitem 65(2) applies to situations where an application for a variation of a preserved licence was made under section 107 of the NTNER Act and the application was made under the ‘old law’ (as defined in item 67, to mean the NTNER Act as in force immediately before the commencement of item 67 of this Schedule); or where notice of a proposed variation or revocation of the preserved licence was given under section 108 of the old law. In these situations, subitem 65(2) provides that the old law continues to apply after 1 July 2010, in relation to the variation or revocation, as if the amendments and repeals made by Part 1 of this Schedule had not happened.

Subitem 65(3) provides for preserved licences to automatically cease to be in effect at the end of the 12-month period beginning on the commencement of item 65, if they have not otherwise ceased to be in effect within that period. During the course of the 12 months, it is expected that almost all preserved licences would have already ceased to be in effect – due to the expiration of the term of the licence, or pursuant to action taken under item 66.

The purpose of item 66 is to make provision for preserved licences which are held by a person who is not the owner of the community store (for example, the manager of the community store) to be replaced by an owner-held licence under the new law, if it is considered desirable for this to happen before the preserved licence ceases to have effect. These provisions allow some flexibility to enable an earlier transition to an owner-held licence where to do so is likely to help promote food security.

Subitem 66(1) provides that item 66 applies where a preserved licence is held by a person who is not the owner of the community store. Item 66 then provides three ways for preserved licences to be replaced by an owner-held licence.

The first situation, in subitem 66(2), is where an owner of a community store, or a person acting on the owner’s behalf, may apply for a community store licence under subsection 96(1) of the new law. The Secretary will then decide whether to grant a community store licence to the owner under section 97 of the new law.
The second way a preserved licence could be replaced by an owner-held licence is provided for in subitem 66(3), which covers the situation where the Secretary considers whether a community store licence is required to be held by the owner of the community store under section 95A of the new law. If the Secretary decides that a community store licence is required to be held by the owner of the community store, then under section 97 of the new law, the Secretary must decide whether to grant a community store licence to the owner.

The third situation, provided for in subitem 66(4), arises if the Secretary conducts an own-initiative assessment (under section 94) and decides to grant a licence to the owner of the community store under subsection 97(2) of the new law.

Subitem 66(5) provides that, if a community store licence (the new licence) is granted under section 97 of the new law to the owner of the community store, then the preserved licence in respect of that store will cease to be in effect from the day on which the new licence takes effect.

If, however, a new licence is not granted, then the preserved licence will continue in force until the earlier of the day on which its period of effect expires or at the end of the period of 12 months from the commencement of item 65 (under subitem 65(3)).

Item 67 sets out definitions that are relevant to the transitional arrangements provided for in items 64, 65 and 66 of this Schedule.
Schedule 7 – Powers of Australian Crime Commission

Summary

This Schedule makes an amendment to the Australian Crime Commission Act 2002 to ensure that the Australian Crime Commission's use of its special powers is in relation to violence and child abuse committed against Indigenous victims.

Background

Division 1 of Part 1 of Schedule 2 to the FaCSIA NTNER and Other Measures Act made several amendments to the Australian Crime Commission Act 2002 (the ACC Act). The amendments enabled the Australian Crime Commission (ACC) Board, under section 7C of the ACC Act, to authorise the ACC to conduct an intelligence operation or an investigation into ‘Indigenous violence or child abuse’.

In particular, the FaCSIA NTNER and Other Measures Act:

- amended the definition of ‘relevant crime’ at subsection 4(1) of the ACC Act to include Indigenous violence or child abuse, and

- inserted a definition of ‘Indigenous violence or child abuse’ at subsection 4(1) of the ACC Act.

‘Indigenous violence or child abuse’ was defined to mean serious violence or child abuse committed by or against, or involving, an Indigenous person.

This Schedule amends the definition of ‘Indigenous violence or child abuse’ in the ACC Act and provides that the new definition applies to ACC operations and investigations begun on or after the commencement of item 2. The term will now be defined to mean ‘serious violence or child abuse committed against an Indigenous person.’

The Government intends the powers provided to the ACC to conduct an intelligence operation or an investigation into Indigenous violence or child abuse to be a special measure under the Racial Discrimination Act. The ACC powers will now be directed at cases where the victim is Indigenous, and will be used for the benefit of those victims.

Special measures are measures that help people of a particular race to enjoy their human rights equally with others. The powers provided to the ACC give effect to the Government’s intention to protect the people who need it most, and are an important part of the Government's response to violence or child abuse perpetrated against Indigenous people.
The Government has issued a report (the NTER Redesign Consultation Report) on the NTER Redesign Consultations, which were undertaken in the development of this legislation, and a Statement (the NTER Redesign Statement) which announced the Government’s approach to this measure. The Statement and the Report contain further material that is important to this special measure.

The Government understands the important decisions that need to be made before introducing special measures. The Government has given careful consideration to whether these laws are a necessary and appropriate way to address the problems affecting Indigenous people in the Northern Territory. While the legislation does not specify an end date for these provisions, the ACC may exercise the relevant powers only under written authorisation of the ACC Board. It is standard practice for authorisations to include an express time limit, after which the Board reviews the authorisation at regular intervals.

This measure will help to improve community safety by ensuring the ACC is able to effectively investigate violence and child abuse committed against Indigenous people. Community consultation on this measure found that people generally accepted the retention of these powers for the ACC because they valued the confidentiality protection these powers provide. Some people said it made them feel safer and more confident about disclosing information on possible criminal activity.

The amendments made by this Schedule commence on 1 July 2010.

**Explanation of the changes**

**Item 1** repeals and replaces the definition of ‘Indigenous violence or child abuse’ in subsection 4(1) of the ACC Act. The new definition will be ‘serious violence or child abuse committed against an Indigenous person’. The purpose of the amendment is to ensure that the ACC’s use of its special powers in relation to Indigenous violence and child abuse is for the benefit of Indigenous victims.

**Item 2** is an application provision, which provides that the amendment to the definition of ‘Indigenous violence or child abuse’ made by **item 1** of this Schedule applies only in relation to an ACC operation or investigation begun on or after the commencement of this item. The ACC intends to seek new authorisations for any operation or investigation before continuing to use its investigative powers in relation to Indigenous violence and child abuse.