

# COMMUNITY STORES

## WHAT IS IT?

A new Commonwealth licensing scheme applies to stores supplying groceries and drinks to remote Aboriginal communities. Community stores must meet governance and commercial requirements and carry satisfactory stocks of consumable goods. They must be capable of tailoring their operations to the [income management regime](#), also introduced as part of the Northern Territory (NT) Intervention.

## WHAT WAS THE STATED RATIONALE:

The Minister introducing the legislation, Mal Brough, [said](#) that the government needed 'to make sure local shops stock good, affordable food for growing children'. Poor quality food, he [said](#), is a major contributor to poor health. While some community stores operated well, he said, others use their monopoly position to engage in profiteering, fail to stock healthy food or lack basic retail training. Stores have closed in some communities, forcing people to shop for basic necessities at roadhouses or distant towns. The licensing scheme would 'put more emphasis on stores meeting certain basic criteria around food quality and financial integrity'.

The government [said](#) that store quality is particularly important given the introduction of income management, as welfare payments can now be quarantined for use on [basic goods](#) many of which are likely to be sold at community stores:

Where stores will have a flow of income from welfare payments, it is important to ensure that they have sound financial management practices, are supported by high quality governance and the range and quality of goods is of a reasonable standard.

## WHAT CHANGES DOES THE MEASURE BRING?

Commonwealth licences will be granted to community stores in the NT that undergo an assessment against [criteria](#) that emphasise, but are not limited to:

- range, quality and quantity of groceries and consumer items (including healthy food and drink)
- financial structure, retail practices and governance arrangements
- capacity to participate in income management, including any past record of working with that system.

Assessments are carried out by [authorised officers](#) who may only enter the store premises with the owner's [consent](#). However, a licence may be [refused](#) if the operator of the store unreasonably withholds consent or unreasonably refuses to provide documents or assistance. The regime also creates a [strict liability offence](#) for store operators who refuse to produce documents and material that are reasonably necessary for the store assessment. If the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) issues a [written request](#) for specified information a person can be fined if they refuse to comply without reasonable excuse – commercial sensitivity is not a sufficient reason, but the risk of self-incrimination is.

The licensing scheme is ad hoc rather than comprehensive. Store owners can apply to be assessed for a Commonwealth licence. Otherwise a store continues operating without such a licence until FaHCSIA decides to activate the assessment process.

If an operator is granted a licence, they [must](#) allow an authorised officer to enter the premises and inspect records to monitor compliance with licence conditions. Operators can [lose their licence](#) for breach of licensing conditions or failing to operate the store in a satisfactory manner, as determined by FaHCSIA. Operators [must](#) have at least seven days notice of revocation of their licence and a chance to put contrary submissions.

If a licensed business is to be sold, the operator must first notify FaHCSIA, which has to satisfy itself that the store will continue to operate in an acceptable way – [otherwise](#) the licence will not be transferred to the new owner.

Where a licence is refused, revoked or not renewed, the FaHSCIA Minister can [seize the assets](#) of a community store by simply making a written declaration to that effect. The declaration is not reviewable as a legislative instrument in Parliament and failure to give proper notice to the operator will not invalidate its effect.

There is no statutory right to compensation where the Commonwealth seizes the assets of a community store in this way. Instead, the Commonwealth is liable to pay a [reasonable amount](#) of compensation only if the seizure would result in an ‘acquisition of property’ otherwise than on just terms under para 51(xxxi) of the Constitution. This style of provision (which applies almost across the board under the NT Intervention) puts considerable constitutional hurdles in the way of a compensation claim.

Prior to the Intervention, stores in the NT generally were subject to a range of regulations imposed by the NT government, such as [liquor](#) and [tobacco](#) licensing. In addition, the NT Department of Health and Community Services required the [registration](#) of all food businesses in order to ensure compliance with environmental health standards. These types of regulation [remain in place](#). Any inconsistent [Commonwealth laws](#) are over-riden.

## **WHO ARE THE MAIN AGENCIES INVOLVED?**

[FaHCSIA](#): administers the licensing scheme.

[Authorised Officers](#): carry out store assessments. They can be public servants or external contractors.

[Community Stores](#): defined as a business where one of the main purposes is the provision of groceries and drinks, located in an area that is subject to the NT Intervention. The definition excludes takeaway shops, fast food outlets and roadhouses, although an [amendment](#) proposed in 2008 would include a roadhouse where an Indigenous community is substantially dependent upon it for the provision of grocery items and drinks. It has been [said](#) that in remote areas of the NT, community stores are typically either owned and run by the local Indigenous council, or by an Indigenous corporation that may or may not return profits to the community, or they are run from leased premises by private interests for profit.

## **LEGISLATION:**

[Northern Territory National Emergency Response Act 2007 \(Cth\), Part 7](#)