

Serial 281

AustralAsia Railway (Special Provisions) Amendment Bill (No. 2) 2000

Mr Burke

**A BILL
for
AN ACT**

to amend the *AustralAsia Railway (Special Provisions) Act*



NORTHERN TERRITORY OF AUSTRALIA
AUSTRALASIA RAILWAY (SPECIAL PROVISIONS) AMENDMENT
ACT (NO. 2) 2000

No. of 2000

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2000

AN ACT

to amend the *AustralAsia Railway (Special Provisions) Act*

[Assented to 2000]
[Second reading 2000]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *AustralAsia Railway (Special Provisions) Amendment Act (No. 2) 2000*.

2. Commencement

(1) Section 4 comes into operation on the day on which, but immediately after, section 4 of the *AustralAsia Railway (Special Provisions) Amendment Act 2000* commences.

(2) Sections 5 and 6 come into operation on the day on which, but immediately after, section 5 of the *AustralAsia Railway (Special Provisions) Amendment Act 2000* commences.

(3) Section 8 comes into operation on the day on which, but immediately after, section 6 of the *AustralAsia Railway (Special Provisions) Amendment Act 2000* (to the extent that the section relates to section 9A of the Principal Act) commences.

(4) Section 9 comes into operation on the day on which, but immediately after, section 7 of the *AustralAsia Railway (Special Provisions) Amendment Act 2000* commences.

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(5) Section 10 is to be taken to have come into operation on 19 April 2000 but immediately after the commencement of section 11 of the *AustralAsia Railway (Special Provisions) Act 1999*.

(6) Section 12 comes into operation on the day on which, but immediately after, section 11 of the *AustralAsia Railway (Special Provisions) Amendment Act 2000* commences.

(7) Section 13 comes into operation on the day on which, but immediately after, section 12 of the *AustralAsia Railway (Special Provisions) Amendment Act 2000* commences.

(8) Section 14 comes into operation on the day on which, but immediately after, section 18 of the *AustralAsia Railway (Special Provisions) Amendment Act 2000* commences.

(9) Sections 15 and 16 come into operation on the day on which, but immediately after, section 19 of the *AustralAsia Railway (Special Provisions) Amendment Act 2000* commences.

(10) Section 17 comes into operation on the day on which, but immediately before, the *Land Title (Consequential Amendments) Act 2000* commences.

(11) The remaining provisions of this Act come into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *AustralAsia Railway (Special Provisions) Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 5 of the Principal Act is amended by omitting from the definition of "corridor" in subsection (1) "by the Corporation" and substituting "by the Territory or another person to the Corporation".

5. Concession Deed etc.: authorisation of implementation and enforcement

Section 5A of the Principal Act is amended by omitting from subsection (2) ", the Corporation or the Darwin Port Corporation in respect of its obligations under the Concession Deed" and substituting "or the Corporation in respect of its obligations under the Concession Deed or any other agreement, contract, deed or other arrangement entered into for a purpose connected with the construction, operation or maintenance of the railway".

6. New section

The Principal Act is amended by inserting after section 5A the following:

"5AA. Specific performance against Darwin Port Corporation etc.

"Despite any Act or other law in force in the Territory to the contrary, an order for specific performance may be made and enforced against the Darwin Port Corporation or the Territory in respect of its obligations under an agreement, contract, deed or other arrangement entered into for a purpose connected with the construction, operation or maintenance of the railway in the same circumstances and on the same conditions as an order for specific performance could be ordered and enforced against a subject of the Crown."

7. Development provisions for corridor and additional land

Section 8 of the Principal Act is amended by inserting after subsection (3)(c) the following:

"(ca) turkeynest dams;

(cb) water extraction facilities;"

8. New section

The Principal Act is amended by inserting after section 9A the following:

"9B. Building controls not to apply to certain structures

"(1) Despite section 6(2) of the *Building Act*, Parts 4 to 13 (inclusive) of that Act do not apply in relation to a structure referred to in section 8(3)(a) to (f) (inclusive) wherever in the Territory the structure is situated.

"(2) To avoid doubt, in accordance with section 6(2) of the *Building Act*, Parts 4 to 13 (inclusive) of that Act apply in relation to a structure referred to in section 8(3)(g) or (h) or 8(4)(a) to (g) (inclusive) that is situated in a part of the Territory in respect of which a declaration under section 6(2) of the *Building Act* is in force."

9. Repeal and substitution

Sections 10A and 10B of the Principal Act are repealed and the following substituted:

"10A. Relief against forfeiture of leases

"(1) In relation to a lease –

(a) sections 136 to 140 (inclusive) of the *Law of Property Act 2000* (Act No. 1 of 2000) apply subject to the modifications that –

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- (i) may be made to, or that may apply in relation to, those provisions by virtue of this section; or
- (ii) may be made by regulation; and

(b) the provisions of the *Crown Lands Act* relating to forfeiture of leases and Part VII of the *Commercial Tenancies Act* do not apply.

"(2) If the *Law of Property Act 2000* (Act No. 1 of 2000) has not commenced before the commencement of this section, that Act (to the extent necessary to give effect to subsection (1)(a)) comes into operation on the commencement of this section.

"(3) On an application for relief against forfeiture of a lease under section 138 of the applied provisions, the Supreme Court must grant the relief unless –

- (a) the lease is being terminated in conjunction with, or as a consequence of, the lawful termination of the Concession Deed; or
- (b) the Court is satisfied –
 - (i) that there has been a material breach of the lease; and
 - (ii) that written notice of the breach has been given to the lessee, any sublessee and the holder of any security over the lease or any sublease requiring –
 - (A) in the case of a remediable breach, including a breach for non-payment of rent – the breach to be remedied;
 - (B) in the case of a non-remediable breach – the payment of reasonable compensation; or
 - (C) in the case of a breach which is partly remediable and partly non-remediable – the breach to be remedied to the extent that it is capable of remedy and otherwise the payment of reasonable compensation;
 - (iii) that a reasonable period of time to comply with the requirements set out in the notice under subparagraph (ii) has been given;
 - (iv) in the case of a breach which is remediable or partly remediable – that the breach has not been remedied as required by the notice and none of the lessee, any sublessee or the holder of any security over the lease or any sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and

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- (v) in the case of a breach which is non-remediable or partly non-remediable – that the compensation has not been paid as required by the notice.

"(4) If a lessee is not entitled to relief under subsection (3), the Supreme Court may grant the lessee relief in accordance with section 138(2) and (3) of the applied provisions.

"(5) Section 139 of the applied provisions is to operate as if the section included a provision allowing the holder of any security over a sublease to make application under subsection (1) of that section.

"(6) On an application in relation to a lease under section 139 of the applied provisions by a sublessee or the holder of any security over a sublease, the Supreme Court must, subject to subsection (7), grant the application if satisfied –

- (a) of all of the following:
 - (i) that the lessor gave the lessee notice in accordance with subsection (3)(b)(ii) requiring the lessee to remedy any breach, to pay reasonable compensation or both;
 - (ii) that a reasonable period of time to comply with the requirements set out in that notice has been given;
 - (iii) that those requirements have not been satisfied and, in the case of a remediable breach, that the lessee is not diligently pursuing the remedy of the breach;
- (b) that any breach on the part of the lessee is not attributable (wholly or to a significant degree) to the acts, omissions or default of the sublessee or the holder of any security over the sublease; and
- (c) that any sublessee in whose favour the application would be granted is unlikely to persistently breach any obligation that has been persistently breached by the lessee.

"(7) Subsection (6) –

- (a) operates subject to any decision on an application for relief against forfeiture under section 138 of the applied provisions;
- (b) does not apply if the Supreme Court determines that it is reasonable to allow the lessee to remain in possession under the lease taking into account any action taken or undertakings given by the lessee and such other matters as the Court thinks just; and



- (c) does not derogate from the operation of section 139(2) and (3) of the applied provisions.

"(8) In this section, unless the contrary intention appears –

'applied provisions' means sections 136 to 140 (inclusive) of the *Law of Property Act 2000* (Act No. 1 of 2000) as modified and applied under this section;

'lease' means –

- (a) a lease over a part of the corridor granted by the Territory or another person to the Corporation and includes a sublease over a part of the corridor granted by the Corporation to the consortium; or
- (b) a lease over a part of the Port of Darwin granted by the Darwin Port Corporation to the consortium for a purpose connected with the construction, operation or maintenance of the railway;

'lessee' includes –

- (a) a sublessee; and
- (b) the executors, administrators and assigns of a lessee."

10. Closure of roads

Section 11 of the Principal Act is amended by adding at the end the following:

"(3) Despite anything to the contrary in the *Control of Roads Act*, after closure of a road or part of a road under this section, the land comprising the road or the part of a road that was closed forms part of the corridor.

"(4) Where a headlease is granted before a road or a part of a road intersecting the leasehold under the headlease is closed under this section –

- (a) after closure of the road or the part of a road, the land comprising the road or the part of a road that was closed is to be taken to be part of that leasehold and part of the subleasehold of a sublease over that land; and
- (b) the headlease, the sublease or the exercise of a right or performance of an obligation under the headlease or sublease is not invalid on the ground that the headlease was granted before the closure.

"(5) In subsection (4) –

'headlease' means a lease over a part of the corridor granted by the Territory to the Corporation;

'leasehold' means the land under a headlease;

'sublease' means a sublease over the whole or any part of a leasehold;

'subleasehold' means the land under a sublease.

"(6) A declaration that—

- (a) purports to close a road or a part of a road under subsection (1) but was published in the *Gazette* before 19 April 2000; and
- (b) would, but for its publication before that date, be a declaration under subsection (1),

is to be taken to be a declaration under subsection (1) published on 19 April 2000.

11. New sections

The Principal Act is amended by inserting before section 12 of the Principal Act the following:

"11B. Modification of section 59 of *Control of Roads Act* for sleeper plants

"Section 59 of the *Control of Roads Act* applies to a railway sleeper manufacturing plant erected or built on a road in accordance with a permission granted under that section as if subsection (5) had been amended by omitting '6 months after the date the notice was given' and substituting 'the period determined by the Minister in accordance with the condition in the permission relating to when the permission is to be revoked'.

"11C. Granting of rights over roads

"(1) This section applies despite anything in the *Control of Roads Act*.

"(2) Subject to this section, the Transport Minister may grant to the consortium a right in respect the whole or any part of a road for a purpose connected with the construction, operation or maintenance of the railway.

"(3) The kinds of rights that may be granted under subsection (2) include but are not limited to a right to use the road to support a bridge or other structure.

"(4) A right granted under subsection (2) is subject to the conditions the Transport Minister thinks fit, including but not limited to a condition about the period during which the right may be exercised.

"(5) In this section —

'road' includes a bridge;

'Transport Minister' means the Minister for the time being administering the *Control of Roads Act* (except Part IV).".

12. Easements in favour of PAWA

Section 14 of the Principal Act is amended by omitting subsection (3A)(a) and (b) and substituting the following:

- "(a) whether over land wholly or partially within the corridor or over any other land;
- (b) whether created by subsection (2) or otherwise; and
- (c) whether registered under the *Real Property Act* or the *Land Title Act* or not,".

13. Easements in favour of private landholders

Section 14A of the Principal Act is amended —

- (a) by omitting from subsection (1) "an access easement" and substituting "an access easement, electricity supply easement or water supply easement";
- (b) by omitting from subsection (1) "the access easement" (wherever occurring) and substituting "the easement";
- (c) by omitting from subsection (2) "An access easement" and substituting "An easement"; and
- (d) by adding at the end the following:

"(4) An electricity supply easement or water supply easement created by subsection (2) is to be taken to be —

- (a) an electricity supply easement or water supply easement as described in Schedule 1 to the *Crown Lands Act*; and
- (b) on and after the commencement of the *Law of Property Act 2000* — an electricity supply easement or water supply easement as described in item 4 or 2 in Part B of Schedule 3 to the *Law of Property Act*."

14. Amalgamation etc. of Authority Certificates

Section 18B of the Principal Act is amended by adding at the end the following:

- "(6) A certificate that —

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- (a) purports to be an Authority Certificate issued by the Authority under this section but was issued before this section commenced; and
- (b) would, but for it being issued before that commencement, have been issued in accordance with this section,

is to be taken to be an Authority Certificate issued under subsection (1) on the day on which this section commences."

15. Acquisition on just terms

Section 19A of the Principal Act is amended –

- (a) by omitting "If" and substituting "(1) If"; and
- (b) by adding at the end the following:

"(2) Compensation under subsection (1) is payable by the Territory."

16. Proceedings involving Crown

Section 19B of the Principal Act is amended by omitting from subsection (6) "those proceedings" and substituting "any such relevant proceedings".

17. Amendment of *Land Title (Consequential Amendments) Act 2000*

Schedule 2 to the *Land Title (Consequential Amendments) Act 2000* is amended by omitting the item relating the *AustralAsia Railway (Special Provisions) Act*.

