

NORTHERN TERRITORY OF AUSTRALIA
AUSTRALASIA RAILWAY (SPECIAL PROVISIONS) REGULATIONS

Regulations 2000, No. 61

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 2000, No. 61*

Regulations under the *AustralAsia Railway (Special Provisions) Act*

I, JOHN CHRISTOPHER ANICTOMATIS, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *AustralAsia Railway (Special Provisions) Act*.

Dated 15 December 2000.

J. C. ANICTOMATIS
Administrator

By His Honour's Command

S. DUNHAM
Minister for Health, Family and Children's Services
acting for and on behalf of the
Minister for the AustralAsia Railway

* Notified in the *Northern Territory Government Gazette* on 10 January 2001.

AUSTRALASIA RAILWAY (SPECIAL PROVISIONS) REGULATIONS

PART 1 – PRELIMINARY

1. Citation

These Regulations may be cited as the AustralAsia Railway (Special Provisions) Regulations.

2. Commencement

These Regulations come into operation on the date, or respective dates, fixed by the Minister by notice in the Gazette.

3. Definitions

In these Regulations, unless the contrary intention appears –

"Railway Corporation Act" means the *AustralAsia Railway Corporation Act*;

"Special Provisions Act" means the *AustralAsia Railway (Special Provisions) Act*.

PART 2 – AMENDMENT OF AUSTRALASIA RAILWAY CORPORATION ACT

4. New section

The Railway Corporation Act is amended by inserting after section 28B in Part 4B the following:

"28C. Successful consortium may pass on civil penalties to contractors

"(1) An agreement to which the successful consortium and a contractor of the successful consortium are parties may provide –

- (a) that if the successful consortium –
 - (i) is in breach of an obligation under an agreement with the Corporation; and
 - (ii) is required to pay to the Corporation by way of civil penalty for the breach an amount in accordance with section 28B; and
- (b) that if the breach of the obligation by the successful consortium arose, in whole or in part, from a breach by the contractor of an obligation under an agreement with the successful consortium in

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connection with the construction, operation or maintenance of the railway,

then the contractor is required to pay to the successful consortium the amount, or part of the amount, of the civil penalty required to be paid by the successful consortium to the Corporation.

"(2) An amount required to be paid to the successful consortium by a contractor under an agreement in accordance with subsection (1) is a debt due to the successful consortium by the contractor –

- (a) despite that neither the successful consortium nor any other person (whether a party to the agreement or not) suffered damage as a result of the breach; and
- (b) despite that the amount required to be paid by the contractor is unrelated to the extent of any damage that the successful consortium or any other person (whether a party to the agreement or not) may have suffered as a result of the breach."

PART 3 – AMENDMENTS OF AUSTRALASIA RAILWAY (SPECIAL PROVISIONS) ACT

5. Repeal

Section 5B of the Special Provisions Act is repealed.

6. Repeal and substitution

Section 10A of the Special Provisions Act is repealed and the following substituted –

"10A. Relief against forfeiture of leases

"(1) In relation to a registered 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 –
 - (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) Relief against forfeiture of a lease (whether under section 138 or 139 of the applied provisions or any other law of the Territory, including the

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common law and the law of equity) is not available if the lease is being terminated as a consequence of the lawful termination of the Concession Deed.

"(3) On an application for relief against forfeiture of a registered lease under section 138 of the applied provisions, subject to subsections (2) and (11), the Supreme Court must grant the relief unless the Court is satisfied –

- (a) that there has been a material breach of the lease;
- (b) that written notice of the breach has been given to the lessee, any sublessee under a registered sublease and the holder of any registered security over the lease or any registered sublease requiring –
 - (i) in the case of a remediable breach, including a breach for non-payment of rent – the breach to be remedied;
 - (ii) in the case of a non-remediable breach – the payment of reasonable compensation; or
 - (iii) 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;
- (c) that a reasonable period of time to comply with the requirements set out in the notice under paragraph (b) has been given;
- (d) in the case of a breach which is remediable or partly remediable – that the breach has not been remedied and none of the lessee, any sublessee under a registered sublease or the holder of any registered security over the lease or any registered sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and
- (e) in the case of a breach which is non-remediable or partly non-remediable – that reasonable compensation has not been paid.

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

"(5) Section 138 of the applied provisions (as modified by the operation of subsection (3) of this section) is to operate as if the section included a provision allowing a sublessee under a registered sublease or the holder of any registered security over a registered sublease to make application under that section in relation to the registered headlease (and such an application may be made even though the headlessee has not applied for relief under that section).

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

"(7) On an application in relation to a registered headlease under section 139 of the applied provisions by a sublessee under a registered sublease or the holder of any registered security over a registered sublease, the Supreme Court must, subject to subsections (8) and (11), grant the application unless –

- (a) the granting of the application would be inconsistent with a decision on an application under section 138 of the applied provisions;
- (b) the Court is satisfied, in respect of any breach of the headlease, that the headlessee has not had a reasonable opportunity –
 - (i) to remedy the breach or to pay reasonable compensation or both; or
 - (ii) to apply for relief against forfeiture,
taking into account –
 - (iii) sections 137 and 138 of the applied provisions and this section; and
 - (iv) the principle that the preservation of the headlease (and any registered sublease) by way of orders under section 138 of the applied provisions (as modified by the operation of subsection (3) of this section) is to be preferred to the making of an order under section 139 of the applied provisions; or
- (c) the Court is satisfied, in respect of any breach of the headlease that is attributable to any act, omission or default of the sublessee or the holder of any registered security over the sublease –
 - (i) that written notice of the breach has been given to the sublessee and the holder of any registered security over the 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

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- (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;
- (ii) that a reasonable period of time to comply with the requirements set out in the notice under subparagraph (i) has been given;
- (iii) in the case of a breach which is remediable or partly remediable – that the breach has not been remedied and neither the sublessee nor the holder of any registered security over the sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and
- (iv) in the case of a breach which is non-remediable or partly non-remediable – that reasonable compensation has not been paid.

"(8) Subsection (7) does not derogate from the operation of section 139(2) and (3) of the applied provisions.

"(9) If a sublessee under a registered sublease is not entitled to an order under subsection (7), subject to subsection (2), the Supreme Court may grant an order in accordance with section 139 of the applied provisions.

"(10) If the Supreme Court makes an order under section 139(1)(d) of the applied provisions in respect of a registered lease, the lease granted to the sublessee by virtue of the order ("the new lease") is to include a provision to the effect –

- (a) that despite any law to the contrary or any provisions as to the period of the new lease, the new lease will be automatically and simultaneously determined on the termination of the Concession Deed and without necessity of notice;
- (b) that if the new lease is determined in the manner contemplated by paragraph (a), the new lease and any interests derived or dependent on the new lease will be determined for all time; and
- (c) that, for the avoidance of doubt, it is expressly acknowledged and agreed by the parties to the new lease that, on the termination of the Concession Deed, the new lease is intended to and will expire by effluxion of time, despite any law.

"(11) The Supreme Court must not make an order under section 138 or 139 of the applied provisions in relation to a registered headlease on the

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application of a sublessee under a registered sublease or the holder of any registered security over a registered sublease unless –

- (a) the headlessee; and
- (b) any sublessee under a registered sublease or holder of any registered security over a registered sublease who is not the applicant,

has had notice of the application and the Court has given each of those persons who is entitled to such notice a reasonable opportunity to be heard on the application.

"(12) 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 and includes –
 - (i) a sublease over a part of the corridor; and
 - (ii) a lease over a part of the corridor granted by virtue of an order under section 139(1)(d) of the applied provisions; or
- (b) a lease over a part of the Port of Darwin granted 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.

"10AA. Power of Crown Lands Minister to enter agreements about termination or forfeiture of leases

"(1) Despite the provisions of the *Crown Lands Act* relating to the termination and forfeiture of leases, the Crown Lands Minister may in the name of the Territory enter into an agreement relating to the termination or forfeiture of a lease over a part of the corridor granted under that Act, including an agreement that is inconsistent with the provisions of the *Crown Lands Act* relating to the termination and forfeiture of leases.

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"(2) In subsection (1), 'Crown Lands Minister' means the Minister for the time being administering the *Crown Lands Act* (except section 79).

"10B. Certain provisions of *Law of Property Act* not to apply

"Sections 134 and 141 of the *Law of Property Act* do not apply in relation to –

- (a) a sublease over a part of the corridor; or
- (b) a lease over a part of the Port of Darwin granted for a purpose connected with the construction, operation or maintenance of the railway."

7. Easements in favour of PAWA

Section 14 of the Special Provisions Act is amended –

- (a) by omitting from subsection (1) "the *Real Property Act* or";
- (b) by omitting from subsection (3) "the Register under the *Real Property Act* or"; and
- (c) by omitting from subsection (3A)(c) "the *Real Property Act* or".

8. Access easements in favour of private landholders

Section 14A of the Special Provisions Act is amended by omitting from subsection (3) "the *Real Property Act* or".