

NORTHERN TERRITORY OF AUSTRALIA
LANDS ACQUISITION AMENDMENT REGULATIONS

Regulations 1999, No. 12

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 1999, No. 12

Regulations under the *Lands Acquisition Amendment Act (No. 2) 1998*

I, NEIL RAYMOND CONN, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Lands Acquisition Amendment Act (No. 2) 1998* as amended by the *Lands and Mining (Miscellaneous Amendments) Act 1998*.

Dated 16 April 1999.

N R CONN
Administrator

By His Honour's Command

DENIS G BURKE
Chief Minister

LANDS ACQUISITION AMENDMENT REGULATIONS

1. Citation

These Regulations may be cited as the Lands Acquisition Amendment Regulations.

2. Principal Act

The *Lands Acquisition Act* is in these Regulations referred to as the Principal Act.

3. Notification of proposal

Section 32 of the Principal Act is amended by omitting subsection (1)(d) and substituting the following:

- "(d) if the land is registered on the register referred to in paragraph (a)(i) – caused a copy of the notice to be lodged with the Registrar-General;
- (da) if native title rights and interests will or may be affected by the proposal – caused a copy of the notice to be lodged with the Native Title Registrar;"

4. Form of notices

Section 33 of the Principal Act is amended –

- (a) by omitting from subsection (1)(d) "indicating";
- (b) by omitting subsection (1)(d)(i) and substituting the following:
 - "(i) specifying, in accordance with section 34(1), the period within which the person served with the notice of proposal may lodge with the Minister an objection to the acquisition so far as it affects the person's interest in the land and the date on which that period commences (being 10 days after the date of publication of the notice of proposed acquisition); and";
- (c) by inserting in subsection (1)(d)(ii) "to the effect" before "that";
- (d) by inserting in subsection (1)(d)(ii) "or has a claim for registration pending as described in subsection (3)(d)" after "body corporate";
- (e) by omitting from subsection (3)(d)(i) "2 months after the date of publication of the notice, a person" and substituting "3 months after the date specified in the notice of proposal referred to in paragraph (e), a person (other than a person served under section 32(1)(b)(i) or (ii)); and

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- (f) by omitting from subsection (3)(d) "3 months from the date of publication of the notice or any further period allowed in writing by the Minister" and substituting "4 months from the date specified in the notice of proposal referred to in paragraph (e)".

5. Lodgement of objections

Section 34 of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "3 months after the date of publication of the notice of proposed acquisition or within the further period allowed in writing by the Minister" and substituting "4 months after the date specified in the notice of proposal (being 10 days after the date of publication of the notice of proposed acquisition)";
- (b) by omitting from subsection (1)(b) "the date of the notice of proposal" and substituting "the date specified in the notice of proposal (being 10 days after the date of publication of the notice of proposed acquisition)"; and
- (c) by omitting from subsection (1B) "3 months from the date of publication of the notice of proposed acquisition" and substituting "4 months after the date specified in the notice of proposal (being 10 days after the date of publication of the notice of proposed acquisition)".

6. Modification or abandonment of proposal

Section 35 of the Principal Act is amended by adding at the end the following:

"(4) A reference in this section to the modification of a proposal is to be read as a reference to a modification that results in either or both of the following:

- (a) a reduction in the area of land proposed to be acquired;
- (b) an alteration to the manner in which it is proposed to deal with the land if acquired, but not so as to have a greater impact than the manner in which it was originally proposed to deal with the land."

7. Consultation and mediation

Section 37 of the Principal Act is amended –

- (a) by omitting from subsection (3) "the last day on which" and substituting "14 days after the last day on which"; and
- (b) by adding at the end the following:

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"(6) Nothing in this section is to be taken to prevent the parties from commencing consultations before the period referred to in subsection (3) commences.

"(7) The parties are encouraged to consult with a view to resolving objections and nothing in this section is to be taken to prevent the parties from doing so."

8. New section

The Principal Act is amended by inserting after section 38 the following:

"38AA. Criteria for making recommendation

"(1) In making a recommendation in relation to the acquisition of land, the Tribunal must take into account all matters that the Tribunal considers relevant.

"(2) Where registered native title rights and interests will be or may be affected by the acquisition, the matters that the Tribunal must take into account under subsection (1) include –

- (a) all objections lodged with and submissions made to the Tribunal in relation to the effect that the acquisition will have or is likely to have on registered native title rights and interests;
- (b) ways of minimising the impact of the acquisition on registered native title rights and interests, including in relation to access to the land the subject of the acquisition;
- (c) the economic or other significance of the acquisition to the Territory and to the region in which the land the subject of the acquisition is located, including the Aboriginal peoples who live in that region; and
- (d) the public interest in the acquisition.

"(3) Before making a recommendation in relation to the acquisition of land –

- (a) the Tribunal must inquire of the parties to the proceeding whether there are any issues relevant to its recommendation in relation to which the parties have reached agreement; and
- (b) if such an agreement has been reached and the parties consent to the Tribunal doing so, the Tribunal must (if relevant) take the agreement into account."

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9. New section

The Principal Act is amended by inserting after section 38A in Division 2 of Part IV the following:

"38B. Consultations may continue

"Nothing in this Act is to be taken to affect the ability of the parties to continue efforts to resolve an objection to an acquisition lodged under section 34 until such time as the Minister decides whether or not to compulsorily acquire the land the subject of the proposal, including while the objection is before the Tribunal."

10. Compulsory acquisition where right to negotiate applies

Section 40 of the Principal Act is amended –

(a) by omitting subsection (1)(a), (b), (c) and (d) and substituting the following:

"(a) a proposal to compulsorily acquire native title rights and interests where –

- (i) the proposal relates to an alternative provision area;
- (ii) the proposed acquisition is an act to which Subdivision P of Division 3 of Part 2 of the Native Title Act applies; and
- (iii) a notice under section 29 of the Native Title Act is given before a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act comes into force;

(b) a proposal to compulsorily acquire native title rights and interests where the proposed acquisition is an act to which Subdivision P of Division 3 of Part 2 of the Native Title Act applies (other than an acquisition that relates to an alternative provision area) and a notice under section 29 of the Native Title Act is given at any time;

(c) a proposal to compulsorily acquire native title rights and interests where –

- (i) the proposal relates to an alternative provision area; and
- (ii) a notice of proposal is given after a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act comes into force but, before those procedures are completed or the compulsory acquisition is done, that determination ceases to be in force.";

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- (b) by omitting from subsection (2) "compulsory acquisition" and substituting "proposal"; and
- (c) by omitting from subsection (3) "Subject to Subdivision P of Division 3 of Part 2 of the Native Title Act, a compulsory acquisition to which this section applies may only be done" and substituting "Subject to section 41(6) of this Act and to Subdivision P of Division 3 of Part 2 of the Native Title Act, native title rights and interests that are the subject of a proposal to which this section applies may only be compulsorily acquired".

11. Abandonment of proposal

Section 41 of the Principal Act is amended –

- (a) by omitting subsection (4);
- (b) by omitting from subsection (5) "section 40(1)(b)" and substituting "section 40(1)(b) or (c); and
- (c) by omitting from subsection (6) "section 40(1)(c)" and substituting "section 40(1)(a)".

12. Recommendations of Tribunal

Section 45 of the Principal Act is amended –

- (a) by inserting after subsection (2) the following:

"(2AA) The Minister must ensure that, prior to consultations under subsection (2)(a), the Tribunal's recommendation and the Tribunal's reasons for making the recommendation are provided to the Minister responsible for indigenous affairs.";

- (b) by omitting from subsection (2A)(a) "subsection (2)(a) and (b)" and substituting "subsections (2)(a) and (b) and (2AA)"; and

- (c) by inserting after subsection (2A) the following:

"(2B) Within 28 days after being notified under section 49 of the compulsory acquisition of land that was done in accordance with a decision of the Minister of a kind referred to in subsection (2A)(c) or (d), any of the following persons may in writing request the Minister for reasons for that decision:

- (a) a registered native title claimant or registered native title body corporate who lodged an objection to the acquisition under section 34;
- (b) a registered native title body corporate that is registered on the National Native Title Register maintained under the Native Title Act

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and holds native title on trust for a person who lodged an objection to the acquisition under section 34 in his or her capacity as a registered native title claimant;

- (c) a person who lodged an objection to the acquisition under section 34 in his or her capacity as a registered native title claimant where, in respect of the relevant native title determination application, an approved determination that the claimant holds native title in the affected land has since been made;
- (d) a person who under section 66B of the Native Title Act replaced a registered native title claimant who lodged an objection to the acquisition under section 34,

unless the objection was subsequently withdrawn.

"(2C) Within 28 days after receiving a request in accordance with subsection (2B), the Minister must provide written reasons for the decision to the person who requested them.

"(2D) Nothing in this section is to be taken to affect the Minister's discretion to decide not to compulsorily acquire native title rights and interests, including where that discretion is exercised as a result of consultations with the Minister responsible for indigenous affairs."

13. Where acquisition may be done subject to conditions

Section 45AA of the Principal Act is amended by omitting from subsection (1) "exist" and substituting "exist or may exist".

14. Judicial review

Section 45A of the Principal Act is amended –

- (a) by omitting from subsection (1) "(other than a decision to acquire land under section 44)";
- (b) by omitting from subsection (2B) all the words after "the Tribunal," and substituting "the recommendation, that part of the decision of the Tribunal to make the recommendation and the Tribunal's reasons for that part of its decision are all to be taken to form part of both the decision being reviewed and the record of the decision being reviewed";
- (c) by inserting after subsection (2B) the following:

"(2C) Where in pursuance of section 45(2C) the Minister has provided reasons for the decision being reviewed, those reasons are to be taken to form part of both that decision and the record of that decision."; and

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(d) by omitting subsection (3) and substituting the following:

"(3) In this section 'person aggrieved' means a person –

- (a) who, immediately before the date of acquisition, had an interest in the acquired land that was divested, modified or affected by the acquisition; and
- (b) who lodged an objection to the acquisition under section 34 that was not subsequently withdrawn,

and includes –

- (c) a registered native title claimant or registered native title body corporate whose registered native title rights and interests were affected by the acquisition and who lodged an objection to the acquisition under section 34;
- (d) a registered native title body corporate that is registered on the National Native Title Register maintained under the Native Title Act and holds native title on trust for a person who lodged an objection to the acquisition under section 34 in his or her capacity as a registered native title claimant;
- (e) a person who lodged an objection to the acquisition under section 34 in his or her capacity as a registered native title claimant where, in respect of the relevant native title determination application, an approved determination that the claimant holds native title in the affected land has since been made; and
- (f) a person who under section 66B of the Native Title Act replaced a registered native title claimant who lodged an objection to the acquisition under section 34,

unless the objection was subsequently withdrawn."

15. Offers

Section 50 of the Principal Act is amended –

(a) by inserting after subsection (1A) the following:

"(1AB) Nothing in this section prevents the Minister from making an offer other than in accordance with this section to a person with a view to reaching agreement about compensation claimed."; and

(b) by omitting subsection (1D) and substituting the following:

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"(1D) In the absence of agreement, compensation that may be payable to a native title holder or a person who asserts to have had a native title right or interest (including a person who held or asserts to have held that right or interest on behalf of a group among whose members any compensation paid would be distributed but not including a registered native title body corporate on whom a copy of a notice of acquisition under section 49(1A)(a)(ii) has been served) is not determinable by the Tribunal until an approved determination of native title to the effect of any of the following has been made:

- (a) that the person holds native title;
- (b) that native title does not exist but did exist immediately before the acquisition and was held by the person;
- (c) that native title does not exist and it is apparent from the terms of or the reasons for the determination that native title did exist immediately before the acquisition and was held by the person;
- (d) that native title does not exist and it is not apparent from the terms of or the reasons for the determination whether native title existed immediately before the acquisition.

Note: Were the Federal Court to make a finding that native title does not exist, it is anticipated that the Court would make a determination of the kind referred to in section 50(1D)(b) or (c) rather than the kind referred to in section 50(1D)(d)."

16. Reference to Tribunal

Section 51 of the Principal Act is amended by omitting from paragraph (b) "the date of acquisition" and substituting "the date on which the notice under section 50(1AA) is served".

17. Claims

Section 52 of the Principal Act is amended –

- (a) by omitting subsection (2)(b) and substituting the following:
 - "(b) if the person was a registered native title claimant or otherwise had or asserts to have had a native title right or interest (including a person who held or asserts to have held that right or interest on behalf of a group among whose members any compensation paid would be distributed but not including a registered native title body corporate on whom a copy of a notice of acquisition under section 49(1A)(a)(ii) has been served) – within one month after being notified by the person that an approved determination of native title to the effect of any of the following has been made:

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- (i) that the person holds native title;
- (ii) that native title does not exist but did exist immediately before the acquisition and was held by the person;
- (iii) that native title does not exist and it is apparent from the terms of or the reasons for the determination that native title did exist immediately before the acquisition and was held by the person;
- (iv) that native title does not exist and it is not apparent from the terms of or the reasons for the determination whether native title existed immediately before the acquisition,

Note: Were the Federal Court to make a finding that native title does not exist, it is anticipated that the Court would make a determination of the kind referred to in section 52(2)(b)(ii) or (iii) rather than the kind referred to in section 52(2)(b)(iv)."; and

- (b) by omitting from subsection (2) "had" and substituting "had or asserts to have had".

18. Compensation for acquired land

Section 59 of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) In the absence of agreement, compensation that may be payable to a native title holder or a person who asserts to have had a native title right or interest (including a person who held or asserts to have held that right or interest on behalf of a group among whose members any compensation paid would be distributed but not including a registered native title body corporate on whom a copy of a notice of acquisition under section 49(1A)(a)(ii) has been served) is not determinable by the Tribunal until an approved determination of native title to the effect of any of the following has been made:

- (a) that the person holds native title;
- (b) that native title does not exist but did exist immediately before the acquisition and was held by the person;
- (c) that native title does not exist and it is apparent from the terms of or the reasons for the determination that native title did exist immediately before the acquisition and was held by the person;

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21. Notices

Section 68 of the Principal Act is amended by omitting from subsection (1) "a copy of a notice of acquisition under section 49(1)(c)(i) and".

22. Application

(1) Sections 33 and 34 of the Principal Act as in force immediately before the commencement of these Regulations continue to apply in relation to proposals in respect of which a notice of proposal had been served or a notice of proposed acquisition had been published before that commencement.

(2) Sections 33 and 34 of the Principal Act as amended by these Regulations apply in relation to proposals in respect of which a notice of proposal is served or a notice of proposed acquisition is published after the commencement of these Regulations.

23. Amendment of *Lands and Mining Tribunal Act*

(1) Section 5 of the *Lands and Mining Tribunal Act* is amended by omitting from paragraph (b) all the words after "an approved determination of native title" and substituting the following:

"to the effect of any of the following:

- (i) that the person claiming compensation holds native title;
- (ii) that native title does not exist but did exist immediately before the acquisition and was held by the person claiming compensation;
- (iii) that native title does not exist and it is apparent from the terms of or the reasons for the determination that native title did exist immediately before the acquisition and was held by the person claiming compensation;
- (iv) that native title does not exist and it is not apparent from the terms of or the reasons for the determination whether native title existed immediately before the acquisition,

Note: Were the Federal Court to make a finding that native title does not exist, it is anticipated that the Court would make a determination of the kind referred to in section 5(b)(ii) or (iii) rather than the kind referred to in section 5(b)(iv).

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- (d) that native title does not exist and it is not apparent from the terms of or the reasons for the determination whether native title existed immediately before the acquisition.

Note: Were the Federal Court to make a finding that native title does not exist, it is anticipated that the Court would make a determination of the kind referred to in section 59(2)(b) or (c) rather than the kind referred to in section 59(2)(d)."

19. Damages

Section 61 of the Principal Act is amended –

- (a) by omitting from subsection (1) "or a native title holder in relation to land" and substituting ", a native title holder or a person who asserts to have had a native title right or interest"; and
- (b) by omitting subsection (2) and substituting the following:

"(2) In the absence of agreement, damages that may be payable to a native title holder or a person who asserts to have had a native title right or interest (including a person who held or asserts to have held that right or interest on behalf of a group among whose members any damages recovered would be distributed) is not determinable by the Tribunal until an approved determination of native title to the effect of any of the following has been made:

- (a) that the person holds native title;
- (b) that native title does not exist but did exist immediately before the acquisition and was held by the person;
- (c) that native title does not exist and it is apparent from the terms of or the reasons for the determination whether native title did exist immediately before the acquisition and was held by the person;
- (d) that native title does not exist and it is not apparent from the terms of or the reasons for the determination whether native title existed immediately before the acquisition.

Note: Were the Federal Court to make a finding that native title does not exist, it is anticipated that the Court would make a determination of the kind referred to in section 61(2)(b) or (c) rather than the kind referred to in section 61(2)(d)."

20. Prepayments

Section 62 of the Principal Act is amended by omitting subsection (3).

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where a reference to a person claiming compensation includes a person claiming compensation on behalf of a group among whose members any compensation paid would be distributed;"

(2) Section 22A of the *Lands and Mining Tribunal Act* is amended by omitting from subsection (2)(a) "would" and substituting "would be likely to".
