

NORTHERN TERRITORY OF AUSTRALIA  
LANDS ACQUISITION AMENDMENT REGULATIONS

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NORTHERN TERRITORY OF AUSTRALIA

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Regulations 1998, No. 42\*

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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*.

Dated 1 October 1998.

N. R. CONN  
Administrator

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LANDS ACQUISITION AMENDMENT REGULATIONS

1. CITATION

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

2. COMMENCEMENT

These Regulations come into operation on the day on which, but immediately after, the *Lands Acquisition Amendment Act (No. 2) 1998* commences.

3. PRINCIPAL ACT

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

4. INTERPRETATION

Section 4 of the Principal Act is amended -

- (a) by omitting from the definition of "affected person" in subsection (1) "section 32(1)(b)(ii)" and substituting "section 32(1)(b)";

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\* Notified in the *Northern Territory Government Gazette* on 1 October 1998.

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- (b) by inserting after the definition of "affected person" in subsection (1) the following:

"'alternative provision area' has the meaning given in section 43A(2) of the Native Title Act;";

- (c) by omitting from subsection (1) the definition of "indigenous land use agreement";

- (d) by inserting after the definition of "notice or proposal" in subsection (1) the following:

"'onshore place' has the meaning given in section 253 of the Native Title Act;"; and

- (e) by inserting after the definition of "owner" in subsection (1) the following:

"'previous exclusive possession act' has the meaning given in section 23B of the Native Title Act;".

5. REPEAL AND SUBSTITUTION

Section 5A of the Principal Act is repealed and the following substituted:

"5A. APPLICATION IN RELATION TO NATIVE TITLE

"This Act applies in relation to an acquisition of an interest in land that comprises native title rights and interests -

- (a) that is an act to which the consequences in section 24MD(6A) or (6B) of the Native Title Act apply; or

- (b) where -

- (i) the acquisition -

(A) is an act to which Subdivision P of Division 3 of Part 2 of the Native Title Act would have otherwise applied; and

(B) relates, to any extent, to an area of land that is an alternative provision area; and

- (ii) there is a determination in force under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act."

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6. NEW PART

The Principal Act is amended by inserting after Part III the following:

"PART IIIA - ACQUISITION BY AGREEMENT

"31A. AGREEMENT WITH OWNER, &c.

"The Minister may acquire land under this Act by agreement if the agreement is -

- (a) in the case of the acquisition of a native title right or interest - in accordance with an indigenous land use agreement entered on the Register of Indigenous Land Use Agreements maintained under the Native Title Act; or
- (b) in the case of any other interest in land - with the owner of the land."

7. HEADING TO PART IV

The heading to Part IV is omitted and the following substituted:

"PART IV - PRE-ACQUISITION PROCEDURES: ACQUISITIONS ABOVE HIGHWATER MARK AND ACQUISITIONS BELOW HIGHWATER MARK FOR NON-GOVERNMENT PURPOSES".

8. NEW DIVISION

Part IV of the Principal Act is amended by inserting before Division 1 the following:

"Division 1A - Application

"31B. APPLICATION ABOVE HIGHWATER MARK, &c.

"(1) Subject to subsection (2), this Part applies in relation to -

- (a) the compulsory acquisition of land to the extent that the acquisition relates to an onshore place on the landward side of the mean highwater mark of the sea; and
- (b) the compulsory acquisition of land to the extent that the acquisition relates to an onshore place on the seaward side of the mean highwater mark of the sea where the compulsory acquisition is an act to which the consequences of section 24MD(6B) of the Native Title Act apply.

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"(2) Where, in relation to the compulsory acquisition of land -

- (a) this Part would, but for this subsection, apply in relation to the compulsory acquisition of so much of the land as is on the landward side of the mean highwater mark of the sea; and
- (b) Part IVA would, but for this subsection, apply in relation to the compulsory acquisition of so much of the land as is on the seaward side of the mean highwater mark of the sea,

the compulsory acquisition is to be taken to consist of 2 separate acts of compulsory acquisition as follows:

- (c) the compulsory acquisition of land on the landward side of the mean highwater mark of the sea;
- (d) the compulsory acquisition of land on the seaward side of the mean highwater mark of the sea."

9. NOTIFICATION OF PROPOSAL

Section 32 of the Principal Act is amended -

- (a) by omitting from subsection (1) all the words from and including "The Minister" to and including "the Minister has -" and substituting "The Minister may compulsorily acquire land in relation to which this Part applies if the Minister has -";
- (b) by omitting subsection (1)(b)(i) and substituting the following:
  - "(a) caused a search to be made of -
    - (i) the Register maintained by the Registrar-General under the *Real Property Act*; and
    - (ii) the Register of Native Title Claims and the National Native Title Register maintained under the *Native Title Act*;"
- (c) by omitting from subsection (1)(b)(ii) all the words from and including "(ii) caused" to and including "an interest" and substituting "(b) caused a notice of proposal to be served on each person ascertained as a result of that search or otherwise as having or claiming to have an interest in the land";

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- (d) by renumbering subsection (1)(b)(ii)(A) and (B) as subsection (1)(b)(i) and (ii), respectively;
- (e) by omitting from subsection (1)(b)(iii) "(iii) caused" and substituting "(c) if native title rights and interests are proposed to be acquired - caused";
- (f) by omitting from subsection (1)(b)(iv) "(iv)" and "subparagraph (i)" and substituting "(d)" and "paragraph (a)", respectively;
- (g) by omitting subsection (1)(b)(v) and (vi) and substituting the following:
  - "(e) caused a notice of proposed acquisition in the approved form to be published in a newspaper circulating in the area in which the land is situated; and
  - (f) caused a notice of proposal in the approved form to be served on the other persons (who may be or include a person lodging an objection under section 34(1)) the Minister is satisfied have an interest in the land that will be divested, modified or affected by the acquisition and on the other persons the Minister thinks necessary.";
- (j) by omitting subsection (2) and substituting the following:
  - "(2) A notice of proposal or notice of proposed acquisition under subsection (1) may relate to the acquisition of more than one area of land or more than one interest in the same area of land."; and
- (k) by omitting from subsection (3) "subsection (1)(b)" and substituting "subsection (1)(b) or (f)".

10. FORM OF NOTICE OF PROPOSAL

Section 33 of the Principal Act is amended -

- (a) by omitting subsection (1)(c) and substituting the following:
  - "(c) an invitation to the person on whom the notice is served to negotiate with the Minister an amount of compensation for the acquisition (after all objections lodged in accordance with section 34 have been dealt with under this Part) of the person's interest by agreement under this Act and advising the person that in

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the absence of agreement the land will be compulsorily acquired; and"; and

- (b) by omitting subsection (1)(d)(i) and substituting the following:

"(i) that -

(A) in the case of a notice of proposal served under section 32(1)(b) - the person on whom the notice is served may, within 2 months after the date of the notice; or

(B) in the case of a notice of proposal served under section 32(1)(f) - a person who has or claims to have an interest in land the subject of the proposal may, within 2 months after publication of the notice of proposed acquisition under section 32(1)(e),

lodge with the Minister in the approved form an objection to the acquisition so far as it affects the person's interest in the land; and".

11. LODGEMENT OF OBJECTIONS

Section 34 of the Principal Act is amended -

- (a) by adding at the end of subsection (1) "so far as it affects that interest";
- (b) by inserting after subsection (1) the following:

"(1A) A person who claims to have native title rights and interests in land the subject of a proposal may only lodge an objection under subsection (1) if the person is a registered native title claimant in respect of those rights and interests.";

- (c) by omitting subsection (3)(b) and substituting the following:

"(b) is to state the manner in which it is said that the acquisition would affect the interest that the person objecting has or claims to have in the land; and";

- (d) by adding at the end of subsection (3)(c) ", unless payment of the fee has been waived by the Minister";



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- (e) by omitting from subsection (5)(a) "section 32(1)" and "service" and substituting "section 32(1)(b)" and "date", respectively; and
- (f) by omitting from subsection 34(5)(b) "40 days" and "section 32(1)(b)(vi)" and substituting "2 months" and "section 32(1)(e)", respectively.

12. MODIFICATION OR ABANDONMENT OF PROPOSAL

Section 35 of the Principal Act is amended by omitting from subsection (2)(c) "section 32(1)(b)(iv)" and substituting "section 32(1)(d)".

13. REPEAL AND SUBSTITUTION

Section 38 of the Principal Act is repealed and the following substituted:

"38. APPLICATION TO TRIBUNAL

"At any time -

(a) after -

- (i) the second scheduled meeting referred to in section 37(3); or
- (ii) the expiry of one month from the date on which a matter was referred to mediation under section 37(4); or

(b) if the Minister and the person objecting have agreed in writing that neither party may take action under this section until after a longer period has expired - after that longer period,

either the Minister or the person objecting to the acquisition may apply to the Tribunal to have the objection to the acquisition heard."

14. NEW DIVISION

Part IV of the Principal Act is amended by adding at the end the following:

*"Division 3 - Right to Negotiate, &c.*

"38A. AGREEMENTS TO SURRENDER, &c., NATIVE TITLE MADE BEFORE 30 SEPTEMBER 1998

"Where, immediately before 30 September 1998, an agreement under section 21 of the Native Title Act is in force, that agreement has affect despite anything in this Act.

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"39. AGREEMENTS AND DETERMINATIONS UNDER SUBDIVISION P  
MADE BEFORE 30 SEPTEMBER 1998

"Where, immediately before 30 September 1998 -

- (a) an agreement under section 31(1)(b) of the Native Title Act; or
- (b) a determination under section 38(1) of the Native Title Act,

is in force in respect of a compulsory acquisition of native title rights and interests to which 24MD(6B) of that Act would otherwise apply then, subject to Subdivision P of Division 3 of Part 2 of that Act, the Minister may compulsorily acquire those native title rights and interests after having complied with the procedures in that Subdivision rather than the procedures in Division 1 and 2 of this Part.

"40. COMPULSORY ACQUISITION WHERE RIGHT TO NEGOTIATE  
APPLIES

"(1) This section applies in relation to the following:

- (a) a compulsory acquisition of native title rights and interests that relates to an alternative provision area and is done 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 compulsory acquisition of native title rights and interests 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 is done at any time.

"(2) Subject to Subdivision P of Division 3 of Part 2 of the Native Title Act, the Minister may do an act to which this section applies under section 43(1)(b) of this Act after having complied with the procedures in that Subdivision rather than the procedures in Division 1 and 2 of this Part.

"41. ABANDONMENT OF PROPOSAL

"(1) The Minister may, at any time before the date of acquisition, abandon a proposal in relation to which section 39 or 40 applies.

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"(2) The Minister must cause notice of the abandonment of a proposal to be given to the persons to whom notice of the proposal was given under section 29 of the Native Title Act.

"(3) The abandonment of a proposal does not prevent the Minister from entering into negotiations to acquire the native title rights and interests the subject of the proposal by agreement under this Act or otherwise or prevent the acquisition of those rights and interests by such agreement.

"(4) The abandonment of a proposal in relation to which section 40(1)(a) applies does not prevent the Minister from compulsorily acquiring the native title rights and interests the subject of the proposal if in doing so the Minister complies with Divisions 1 and 2 of this Part.

"(5) The abandonment of a proposal in relation to which section 40(1)(b) applies does not prevent the Minister from compulsorily acquiring the native title rights and interests the subject of the proposal if in doing so the Minister complies with Subdivision P of Division 3 of Part 2 of the Native Title Act."

15. NEW PART

The Principal Act is amended by inserting after Part IV the following:

"PART IVA - PRE-ACQUISITION PROCEDURES:  
ACQUISITIONS BELOW HIGHWATER MARK FOR GOVERNMENT PURPOSES

"42. APPLICATION

"Subject to section 31B(2), this Part applies in relation to the compulsory acquisition of land to the extent that the acquisition relates to an onshore place on the seaward side of the mean highwater mark of the sea, other than a compulsory acquisition that is an act to which the consequences of section 24MD(6B) of the Native Title Act apply.

"42A. NOTIFICATION OF PROPOSAL

"(1) The Minister may compulsorily acquire land in relation to which this Part applies if the Minister has -

(a) caused a search to be made of -

(i) the Register maintained by the Registrar-General under the *Real Property Act*; and

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- (ii) the Register of Native Title Claims and the National Native Title Register maintained under the Native Title Act;
- (b) caused a notice of proposal to be served on each person ascertained as a result of that search or otherwise as having or claiming to have an interest in the land that will be divested, modified or affected by the acquisition of the land, including -
  - (i) the registered native title claimants (if any) in relation to any of the land; and
  - (ii) the registered native title bodies corporate (if any) in relation to any of the land;
- (c) if native title rights and interests are proposed to be acquired - caused a copy of the notice of proposal to be served on the representative Aboriginal/Torres Strait Islander body or bodies in relation to the land;
- (d) if the land is registered on a register referred to in paragraph (a) - caused a copy of the notice to be lodged with the Registrar-General or the Native Title Registrar, as the case may be;
- (e) caused a notice of proposed acquisition in the approved form to be published in a newspaper circulating in the area in which the land is situated; and
- (f) caused a notice of proposal in the approved form to be served on the other persons (who may be or include a person lodging comments under section 42C(1)) the Minister is satisfied have an interest in the land that will be divested, modified or affected by the acquisition and on the other persons the Minister thinks necessary.

"(2) A notice of proposal or notice of proposed acquisition under subsection (1) may relate to the acquisition of more than one area of land or more than one interest in the same area of land.

"(3) The serving of a notice of proposal under subsection (1)(b) or (f) does not constitute -

- (a) an offer or binding agreement to acquire the land the subject of the notice; or

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- (b) a recognition by the Territory that the person on whom it is served has an interest in the land proposed to be acquired.

"42B. FORM OF NOTICE OF PROPOSAL

"(1) A notice of proposal is to be in the approved form and contain -

- (a) a description of the land proposed to be acquired;
- (b) details of the manner in which it is proposed that the land, if acquired, will be dealt with;
- (c) an invitation to the person on whom the notice is served to negotiate with the Minister an amount of compensation for the acquisition of the person's interest by agreement under this Act and advising the person that in the absence of agreement the land will be compulsorily acquired;
- (d) a statement to the effect that -
  - (i) in the case of a notice of proposal served under section 42A(1)(b) - the person on whom the notice is served may, within 2 months after the date of the notice; or
  - (ii) in the case of a notice of proposal served under section 42A(1)(f) - a person who has or claims to have an interest in land the subject of the proposal may, within 2 months after publication of the notice of proposed acquisition under section 42A(1)(e),

lodge in writing with the Minister comments on the acquisition; and

- (e) where the proposal is for the acquisition of native title rights and interests - a statement to the effect that, if there are no registered native title claimants or registered native title bodies corporate in relation to the land the subject of the proposal, the representative body or bodies in relation to that land may, within 2 months after publication of a notice of proposed acquisition under section 42A(1)(e), lodge in writing with the Minister comments on the acquisition.

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"(2) The Minister must cause to be served on each person served with a notice of proposal under section 42A(1)(b) or (f) a statement in the approved form summarising the rights of such persons under this Act.

### "42C. COMMENTS ON ACQUISITION

"(1) A person who has or claims to have an interest in land the subject of a proposal may, within the objection period or such further period as the Minister in writing allows, lodge in writing with the Minister comments on the acquisition.

"(2) Where -

- (a) the proposal is for the acquisition of native title rights and interests; and
- (b) there are no registered native title claimants or registered native title bodies corporate in relation to any of the land the subject of the proposal,

the representative Aboriginal/Torres Strait Islander body or bodies in relation to that land may, within the objection period or such further period as the Minister in writing allows, lodge in writing with the Minister comments on the acquisition.

"(3) Subject to section 89A, compensation is payable to a person whose interest in land is acquired under this Part whether or not comments on the acquisition were lodged under subsection (1) or (2).

"(4) In this section, 'objection period', in relation to a person who is entitled to lodge comments under subsection (1) or (2), means -

- (a) if the person is served with a notice in pursuance of section 42A(1)(b) - 2 months after the date of the notice; or
- (b) in any other case - 2 months after publication of the notice referred to in section 42A(1)(e).

### "42D. MINISTER TO HAVE REGARD TO COMMENTS

"The Minister must not compulsorily acquire land in relation to which this Part applies unless the Minister has taken into account the comments (if any) lodged in accordance with section 42C."

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16. ACQUISITION WITHOUT OBJECTION OR RECOMMENDATION

Section 44 of the Principal Act is amended -

- (a) by omitting from subsection (1) "acquire land under this Division" and substituting "compulsorily acquire land under section 43(1)(b)";
- (b) by omitting subsection (2)(a) and substituting the following:

"(a) native title in the land has been extinguished, whether by the doing of a previous exclusive possession act or otherwise; and";
- (c) by omitting from subsection (3) "if";
- (d) by omitting from subsection (3)(a) "the acquisition" and substituting "if";
- (e) by omitting subsection (3)(a)(i) and substituting the following:

"(i) native title in the land has been extinguished, whether by the doing of a previous exclusive possession act or otherwise; or"; and
- (f) by inserting in subsection (3)(a)(ii) "the acquisition" before "is".

17. RECOMMENDATIONS OF TRIBUNAL

Section 45 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following:

"(1) Where the Tribunal makes a recommendation in relation to a proposal to acquire an interest in land other than native title rights and interests, the Minister must not compulsorily acquire the interest unless the Minister has taken the Tribunal's recommendation into account.

"(2) Where, in relation to a proposal to acquire native title rights and interests -

- (a) the Tribunal recommends that those rights and interests must not be compulsorily acquired; or
- (b) the Tribunal recommends that those rights and interests may be compulsorily acquired, whether or not subject to specified conditions being complied with, and the Minister wishes to

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compulsorily acquire those rights and interests,

the Minister must comply with the recommendation unless -

- (c) the Minister has consulted with the Minister responsible for indigenous affairs (being the Minister to whom responsibility for Aboriginal development is allotted under an Administrative Arrangements Order);
- (d) the Minister has taken that consultation into account; and
- (e) it is in the interests of the Territory not to comply with the recommendation.

"(2A) Where -

- (a) the Minister has complied with subsection (2)(c) and (d); and
- (b) subsection (2)(e) applies,

the Minister may -

- (c) reject the recommendation; or
- (d) accept the recommendation and -
  - (i) reject any of the conditions in the recommendation, with or without imposing his or her own conditions;
  - (ii) vary any of the conditions in the recommendation;
  - (iii) substitute his or her own conditions for any of the conditions in the recommendation; or
  - (iv) add his or her own conditions to the recommendation,

and compulsorily acquire the rights and interests accordingly."

18. JUDICIAL REVIEW

Section 45A of the Principal Act is amended by inserting after subsection (2) the following:

"(2A) For the purposes of subsection (2), where the decision being reviewed complies with a recommendation of



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the Tribunal, the decision is to be taken to include the decision of the Tribunal to make the recommendation."

### 19. SERVICE OF NOTICE OF ACQUISITION

Section 49 of the Principal Act is amended -

- (a) by omitting from subsection (1) "under Division 1" and substituting "compulsorily acquired under section 43(1)(b)";
- (b) by omitting subsection (1)(a)(ii) and substituting the following:  
" (ii) if native title rights and interests have been acquired - the Register of Native Title Claims and the National Native Title Register maintained under the Native Title Act;"; and
- (c) by omitting from subsection (1A)(b) "bodies" and substituting "bodies (if any)".

### 20. OFFERS

Section 50 of the Principal Act is amended -

- (a) by omitting from subsection (1) all the words after "served" (second occurring) and substituting the following:

"on that person, unless the person is a registered native title claimant -

- (a) an offer of compensation that the Minister considers appropriate for the acquisition of that person's interest in the acquired land; or
- (b) an offer of the transfer of land and, if the transfer is instead of part only of that compensation, compensation.";
- (b) by omitting from subsection (1A) "their" and substituting "the claimant's"; and
- (c) by omitting from subsections (2) and (3) "resettlement" and substituting "the transfer of land".

### 21. CLAIMS

Section 52 of the Principal Act is amended by omitting from subsection (2) "an offer of compensation for the person's interest in the acquired land in accordance with section 50(1)" and substituting "an offer

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in accordance with section 50(1) in respect of the interest that the person had in the acquired land".

22. OFFERS OF TRANSFER OF LAND

Section 63 of the Principal Act is amended -

(a) by omitting from subsections (1) and (2) "resettlement" and substituting "the transfer of land"; and

(b) by omitting subsection (3).

23. NOTICES

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

24. ACQUISITION BY AGREEMENT UNDER THIS ACT

Section 89A of the Principal Act is amended -

(a) by omitting from subsection (2) "Subject to subsection (3), nothing" and substituting "Nothing"; and

(b) by omitting subsection (3).

25. REGISTRAR-GENERAL

Section 91 of the Principal Act is amended by omitting "section 32(1)(b)(iv)" and substituting "section 32(1)(d)".

26. SCHEDULE 2

Schedule 2 to the Principal Act is amended by omitting the heading to clause 7 and substituting "7. COST OF ACQUIRING OTHER LAND".