EXPLANATORY STATEMENT

Northern Territory National Emergency Response (Land Use Approvals) Guidelines 2010

Summary

The Northern Territory National Emergency Response (Land Use Approvals) Guidelines 2010 (the Guidelines) are made under subsection 35A(2) of the Northern Territory National Emergency Response Act 2007 (the Act).


As required under section 35A of the Act, the Guidelines specify the matters which the Commonwealth must have regard to when exercising a power under subsection 35(5) of the Act.

Background

By operation of section 31 of the Act, the Commonwealth currently holds leases over 64 Northern Territory communities. These leases, commonly referred to as five-year leases, enable Government to provide prompt access for the delivery of services, repair of buildings and development of infrastructure in communities as part of the Northern Territory Emergency Response (NTER).

Section 35 of the Act sets out the main terms and conditions of a lease granted to the Commonwealth under section 31 of the Act.

Under subsection 35(5) of the Act, the Commonwealth may, at any time, sublease, license, part with possession of, or otherwise deal with, its interest in the lease. In exercising its power under subsection 35(5), the Commonwealth, through an administratively based land use approval process, considers applications or requests from proposers (e.g.: persons, corporations, unincorporated associations, and other entities, including government) who wish to use the leased land for a particular purpose.

Notes on Sections

Section 1 states the name of the Guidelines.

Section 2 states the commencement date for the Guidelines. The Amendment Act specifies that item 4 (i.e. section 35A of the Act) is to commence on a single day to be fixed by Proclamation or one day after the period of 6 months from Royal Assent. The Amendment Act received Royal Assent on 29 June 2010, meaning section 35A commences on 30 December 2010. The Commonwealth must consider the Guidelines from the date section 35A takes effect.

Section 3 contains definitions of key terms used in the Guidelines.
Section 4 states that the Guidelines apply if the Commonwealth is considering whether to exercise its power under subsection 35(5) of the Act to enable a proposer to use land leased to the Commonwealth under section 31 of the Act for a particular purpose. It also specifies that the Commonwealth must consider matters mentioned in sections 5 to 10 of the Guidelines when exercising its power under subsection 35(5) of the Act.

Section 5 lists the general matters the Commonwealth must have regard to when exercising a power under subsection 35(5) of the Act. These general matters include a requirement to consider whether there are any competing claims to the leased land in subsection 5(1)(c), and a requirement to consider the views of persons consulted about the proposed use of the land (subsection 5(1)(d)). Subsections 5(2), (3) and (4) provide further details regarding consultation.

Section 6 reiterates the object of Part 4 of the Act (see section 30A of the Act). It provides that the Commonwealth must consider if the proposed use of the leased land is consistent with the object of Part 4 of the Act; that is, to improve service delivery and to promote economic and social development in Indigenous communities.

Section 7 provides that the Commonwealth must consider the effect of the proposed use on any existing right, title or other interest in the leased land. A note at the end of this section refers to section 34 of the Act which provides for the preservation of existing rights, titles or interests in the leased land.

Section 8 provides that the Commonwealth must consider any information given to the Commonwealth by the relevant NT planning body about the leased land, and the views (if any) of the relevant NT planning body about the proposed use. Subsections (2) and (3) provide further details about the concepts of ‘information given to the Commonwealth’ and the ‘relevant NT planning body’ respectively.

Section 9 provides that the Commonwealth must consider whether the proposer is aware that there is, or there may be, a sacred site on the leased land, and whether conditions in relation to sacred sites should be imposed on the proposer. Subsection 9(2) provides examples of conditions which the Commonwealth may impose on the proposer.

Section 10 states that the Commonwealth must consider whether to impose conditions on the proposer about the proposed use of the leased land. Subsection 10(2) contains a list of conditions which the Commonwealth may impose on the proposer but these conditions do not restrict the Commonwealth being able to impose other conditions it considers appropriate in the circumstances.

Consultation

The Commonwealth took into consideration information gathered during two periods of consultation prior to making the Guidelines by legislative instrument. The Commonwealth is satisfied that by consulting Indigenous people about the five-year leases and seeking comments on the draft Guidelines from key stakeholders and experts in the field, appropriate consultations were undertaken.
The Commonwealth conducted extensive consultations with Indigenous people in the Northern Territory about future directions for the NTER measures, including the five-year leases. As part of this process, the Commonwealth proposed to make a number of changes to the five-year leases, including: clarifying the objectives and permitted use of the five-year leases; requiring that the leases be administered in a way that respects Indigenous culture; and obliging the Commonwealth to negotiate voluntary leases in good faith, if requested by the land owner. The Commonwealth also suggested it would develop clear guidelines to govern the land use approval process to ensure the transparent allocation of lots. The consultations indicated support for changes that would improve clarity over the administration and governance of the five-year leases.

The Commonwealth also consulted key stakeholders and experts in the field in relation to the land use approval process and content of the Guidelines. These parties were the Central Land Council, the Northern Land Council and the Tiwi Land Council as representatives of the interests of affected parties being the land owners and as themselves stakeholders impacted by the Guidelines, and the Northern Territory Department of Lands and Planning as a stakeholder with expertise in the field of planning in Indigenous communities.

The Commonwealth took into consideration the comments received from these stakeholders before finalising the Guidelines.