

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 223**

Subject: *Lands Acquisition Amendment Regulations 2007 (No. 1)*

#### *Lands Acquisition Act 1969*

Section 140 of the *Lands Acquisition Act 1989* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act sets out the processes that the Commonwealth and its agencies must follow when acquiring or disposing of an interest in land. The Act includes provisions for compulsorily acquiring an interest in land and for the arrangements for consequential payment of compensation on just terms.

The purpose of the proposed Regulations is to exempt from the Act the acquisition by the Commonwealth of a lease of the township of Nguui, Bathurst Island, in the circumstance that the acquisition occurs in accordance with section 19A of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALR Act). The specific parcel of land is on Bathurst Island in the Northern Territory with an area of 454 hectares more or less, being Northern Territory Portion 6798, delineated on Survey Plan S2007/183 lodged with the Northern Territory Surveyor-General in Darwin. The acquisition of the Nguui township lease will be approved under section 19A of the ALR Act.

Aboriginal land granted under the ALR Act is held by Land Trusts established under that Act. The Land Trusts may grant leases over townships to an approved Commonwealth or Northern Territory entity which will be responsible for the administration of township leases under section 19A of the ALR Act.

The ALR Act provides for dealings in land by a Land Trust to be exempt from the Act. However, the acquisition of an interest in land by the Commonwealth or a Commonwealth authority through voluntary agreement with the Land Trust is not exempt from the Act. The exemption for the acquisition by agreement of the Nguui township lease by the Commonwealth or a Commonwealth authority will mean that this acquisition will not need to follow the detailed processes of the Act and not require the approval of the Minister for Finance and Administration. However, such an acquisition will still need to be done in accordance with the ALR Act and will require the approval of the Minister for Families, Community Services and Indigenous Affairs.

Where the Commonwealth enters into a section 19A lease, it will be for the benefit of existing and future residents of the township, and not, for example, to secure buildings or land for typical Commonwealth uses. Once a section 19A lease has been entered into, the Commonwealth (specifically the Executive Director of Township Leasing established by section 20B of the ALR Act) will proceed to issue subleases to residents, businesses and service providers. The primary purpose of having the township lease will be to issue subleases (and other interests) over most, if not all, of the area of the township. There is no intention for the Commonwealth to benefit financially from income from the lease. Such income will be used to contribute to the township lease payments for the benefit of the traditional Aboriginal owners, and cover administration costs.

A Land Trust may only enter into a township lease at the direction from the relevant Land Council. The Land Councils are independent statutory bodies established under the ALR Act to represent the traditional owners of Aboriginal land. Under the ALR Act, in giving its direction the Land Council will have to be satisfied that the traditional owners understand the nature of the proposed lease and consent to it, that Aboriginal people that may have been affected have been consulted and that the terms and conditions of the lease are reasonable. Given the Land Council's statutory independence and role representing the Land Trust, the Land Trust can be said to be in a position of equality with the Commonwealth in giving agreement to a township lease.

An exemption from the Act of the acquisition by agreement of the Nguju township lease by the Commonwealth or Commonwealth authority under the ALR Act will be on the grounds that the township lease will not be a normal commercial property transaction; the Land Council directs the Land Trust to grant the lease when satisfied that the Indigenous land owners consent; statutory independence of the Land Council and the Land Trust will be preserved; the voluntary nature of the proposed acquisition; and the consequential obligations upon the Commonwealth under the township lease to act in the interest of Indigenous owners. The rights, interests and cultural appropriateness of the entry into the township leases will be preserved by the ALR Act. Dealings in the township lease by the Commonwealth or a Commonwealth authority, including sub-leasing will continue be undertaken under the Act.

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulations will commence on the day after they are registered on the Federal Register of Legislative Instruments.

Consultation in accordance with the *Legislative Instruments Act 2003* has not been undertaken given that the instrument is of a minor or machinery nature and does not substantially alter existing arrangements.