

## **EXPLANATORY STATEMENT**

### *Aboriginal Land Rights (Northern Territory) Act 1976*

#### *Aboriginal Land Rights (Northern Territory) Amendment (Leases) Regulations 2017*

Section 78 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all 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.

#### **Township area vested in the Arnhem Land Aboriginal Land Trust**

Section 3AB defines townships, in relation to a Land Trust, for the purposes of the Act. In particular, section 3AB(3) of the Act defines townships to include an area of land that is prescribed by the regulations, for the purposes of section 3AB(3), in relation to the applicable Land Trust only.

A township lease for Gunyangara in North East Arnhem Land is being negotiated between the Gumatj Corporation Limited, the Arnhem Land Aboriginal Land Trust and the Northern Land Council under section 19A of the Act. The Gumatj Corporation Limited intends to establish an approved Commonwealth entity under section 3AAA of the Act (Gumatj Approved Entity) which will enter into and administer the lease in accordance with its terms and conditions.

These amendments to the *Aboriginal Land Rights (Northern Territory) Regulations 2007* prescribe a single township of Gunyangara in the Northern Territory in relation to the Arnhem Land Aboriginal Land Trust.

#### **Functions of the Executive Director**

The Executive Director of Township Leasing (Executive Director) is a statutory office established by section 20B of the Act. The Executive Director's functions are enumerated in section 20C of the Act. These include the administration of leases granted to the Commonwealth under section 19A of the Act. Section 20C(c) provides that the Executive Director's functions can include "any other functions that are prescribed by the regulations, being functions relating to the matters referred to in this section."

Under the Act, a township lease must be held by an approved entity. Currently, the Commonwealth is the only approved entity (with the Executive Director entering into and administering township leases on behalf of the Commonwealth).

The proposed township lease for Gunyangara is to be granted to a Gumatj Approved Entity. This model of township leasing has been developed at the request of traditional Aboriginal owners to strengthen local decision making in communities and to provide another option for traditional Aboriginal owners to leverage their land assets for economic and community benefit.

The Gumatj Approved Entity may seek the advice and assistance of the Executive Director in relation to administering its township lease.

In addition, other Indigenous communities on Aboriginal land may be interested in establishing approved Commonwealth entities for the purposes of township leasing. The Executive Director may also transfer subleases of Aboriginal land it holds to an Aboriginal and Torres Strait Islander corporation pursuant to section 20CB(1) of the Act.

For such township leases and subleases, the approved Commonwealth entity or corporation may seek the advice and assistance of the Executive Director in relation to administering the lease or sublease or other right granted under the lease or sublease.

The Regulations prescribe a further function to the Executive Director, enabling the Executive Director to enter into an agreement with an approved Commonwealth entity or corporation under which the Executive Director will provide services to the entity or corporation related to administering a township lease or a sublease or other right granted under a township lease or sublease. The Executive Director has gained significant experience in holding and administering township leases and subleases. Approved Commonwealth entities and corporations will benefit from being able to use this expertise to assist in discharging their roles as the holder of a township lease or sublease.

### **Conditions to be Satisfied**

The Act does not specify conditions that need to be satisfied before the power to make the Regulations may be exercised.

### **Legislative Instrument**

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

### **Commencement**

The Regulations commence on the date after registration on the Federal Register of Legislative Instruments.

### **Regulatory Impact Statement**

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required.

### **Consultation**

Consultations have been undertaken in relation to a township lease for Gunyangara and on the survey for the township. In particular, the Northern Land Council has agreed in principle to the grant of a lease over the Gunyangara township. In accordance with section 19A(2) of the Act, the Northern Land Council has consulted with the traditional Aboriginal owners and other Aboriginal people with an interest in the land.

The Northern Land Council, Central Land Council, Tiwi Land Council, Anindilyakwa Land Council and Northern Territory Government were consulted with, and agree to the Regulations.

## **Explanation of provisions**

### Section 1 – Name of Regulations

This section sets out the name of the Regulations, being the *Aboriginal Land Rights (Northern Territory) Amendment (Leases) Regulations 2017* (the Regulations).

### Section 2 – Commencement

This section provides that the Regulations commence the day after registration.

### Section 3 – Authority

This section provides that the Authority for the Regulations is the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act).

### Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

### Schedule 1 – Amendments

#### Schedule 1, item 1

This item adds a note at the end of subregulation 5(1) to state that the area described in subregulation 5(1) is known as Wurrumiyanga.

#### Schedule 1, item 2

This item inserts regulation 6AA after existing regulation 6. New regulation 6AA provides for a parcel of land to be prescribed as a single township in relation to the Arnhem Land Aboriginal Land Trust.

The parcel of land is in the Northern Territory with an area of 376.2 hectares, more or less, being Northern Territory Portion 7560(A), delineated on Survey Plan S2016/039.

#### Schedule 1, item 3

This item inserts a new regulation 7 after the existing regulation 6A.

New subregulation 7(1) provides that the Executive Director will have the additional functions prescribed in subregulation 7(2) if:

- (a) a Land Trust has granted, or is considering granting, a lease (the **main interest**) to a Commonwealth entity under section 19A of the Act; or

- (b) the Executive Director has transferred, or is considering transferring, a sublease (the **main interest**) to an Aboriginal and Torres Strait Islander corporation under subsection 20CB(1) of the Act.

New subregulation 7(2) sets out the additional function the Executive Director will have where the requirements in subregulation 7(1) have been satisfied. New subregulation 7(2) provides that the Executive Director may enter into an agreement with the entity referred to in subregulation 7(1)(a), or the corporation referred to in subregulation 7(1)(b), under which the Executive Director agrees to provide services relating to administering:

- (a) the main interest; or
- (b) a sublease or other right or interest derived from the main interest.

New subregulation 7(3) provides that the Executive Director must provide the services in accordance with the agreement entered into under subregulation 7(2).

New subregulation 7(4) provides that the agreement entered into under subregulation 7(2) may make provision for the payment of fees to the Commonwealth for the provision of services by the Executive Director.

New subregulation 7(5) provides that a fee provided for by the agreement must not be such as to amount to taxation.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Aboriginal Land Rights (Northern Territory) Amendment (Leases) Regulations 2017*

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Regulation amends the *Aboriginal Land Rights (Northern Territory) Regulations 2007*.

### Overview of the Bill/Disallowable Legislative Instrument

Section 3AB of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) defines townships, in relation to a Land Trust, for the purposes of the Act. In particular, section 3AB(3) of the Act defines townships to include an area of land that is prescribed by the regulations, for the purposes of section 3AB(3), in relation to the applicable Land Trust only.

These Regulations prescribe a single township of Gunyangara in the Northern Territory in relation to the Arnhem Land Aboriginal Land Trust.

The Executive Director is a statutory office established by section 20B of the Act. The Executive Director's functions are enumerated in section 20C of the Act. These include the administration of leases granted to the Commonwealth under section 19A of the Act. Section 20C(c) provides that the Executive Director's functions can include "any other functions that are prescribed by the regulations, being functions relating to the matters referred to in this section."

These Regulations prescribe a further function to the Executive Director, enabling the Executive Director to enter into an agreement with an approved Commonwealth entity or corporation under which the Executive Director will provide services to the Commonwealth entity or corporation related to administering a township lease or a sublease or other right granted under a township lease or sublease.

### Human rights implications

This Bill/Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

### Conclusion

This Bill/Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.