

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Indigenous Australians

*Aboriginal Land Rights (Northern Territory) Act 1976*

### ***Aboriginal Land Rights (Northern Territory) Amendment Regulations 2022***

#### **Overview**

The *Aboriginal Land Rights (Northern Territory) Amendment Regulations 2022* (Amendment Regulations) amend the *Aboriginal Land Rights (Northern Territory) Regulations 2007* (principal Regulations) to:

- prescribe additional areas of township land vested in the Anindilyakwa Land Trust to incorporate additional communities into the Groote region township lease;
- repeal prescriptions of township land to allow for township lease areas to be prescribed by instrument as of 13 December;
- clarify certain functions of the Executive Director of Township Leasing to confirm that administrative support services can be provided to approved community township leasing entities.

#### **Amendments**

##### **Prescribe additional areas of township land**

The *Aboriginal Land Rights (Northern Territory) Amendment Regulations 2022* (the Amendment Regulations) prescribe additional areas of land vested in the Anindilyakwa Land Trust under subsection 3AB(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act). This adds the communities of Little Paradise, Malkala, Bartalumba Bay, and Four Mile to the areas of land prescribed as a single township in relation to the Anindilyakwa Land Trust under section 6 of the principal Regulations.

##### **Repeal prescriptions of township land**

The Amendment Regulations will, as of 13 December 2022, repeal sections 5, 5AA, 5A, 6 and 6AA of the principal Regulations. The township land prescribed by these sections will thereafter be prescribed by the proposed *Aboriginal Land Rights (Northern Territory) (Townships) Instrument 2022*. This is in accordance with item 14 of Schedule 2 to the *Aboriginal Land Rights (Northern Territory) Amendment (Economic Empowerment) Act 2021* (the Amendment Act), which as of 13 December 2022 will insert a new subsection 3AB(3A) into the Act to permit the Minister to prescribe areas of land as townships by legislative instrument.

##### **Clarify the functions of the Executive Director of Township Leasing**

The functions of the Executive Director of Township Leasing (Executive Director) are prescribed by section 20C of the Act, with additional functions prescribed in the principal

Regulations. Paragraph 7(1)(a) of the Regulations previously referred to the situation where a Land Trust has granted, or is considering granting, a lease under section 19A of the Act. The Amendment Regulations amend paragraph 7(1)(a) of the principal Regulations to clarify that in circumstances where an approved entity holds, or may become the holder of, a lease under section 19A of the Act, the Executive Director may provide services to the approved entity in relation to the administration of the lease or rights or interests derived from the lease, such as a sublease. In these circumstances, it would not matter whether the section 19A lease was granted to the approved entity by a Land Trust or transferred to the approved entity by another approved entity.

### **Commencement**

The Amendment Regulations, other than those provisions that would repeal prescriptions of township land, commence on the date after registration on the Federal Register of Legislative Instruments. The amendments that would repeal prescriptions of township land would commence on 13 December 2022.

### **Consultation**

The proposed Regulations have been drafted in consultation with: the Executive Director of Township Leasing; Northern Territory Land Councils; the Anindilyakwa Royalties Aboriginal Corporation; the Gundjeihmi Aboriginal Corporation Jabiru Town; the Ngarrariyal Aboriginal Corporation; and, the Northern Territory Government.

### **Financial impact**

Nil

## ATTACHMENT A

### Explanation of Regulations

#### Section 1 - Name of Regulations

The instrument is the *Aboriginal Land Rights (Northern Territory) Amendment (2022 Measures No. 1) Regulations 2022* (Amendment Regulations).

#### Section 2 - Commencement

This section clarifies the commencement days for different parts of the proposed Regulations. The section only relates to the provisions of the proposed Regulations as originally made and will not be amended to deal with any later amendments of the proposed Regulations.

- i. Sections 1 to 4 and anything in the proposed Regulations not elsewhere covered by the commencement table commences the day after the instrument is registered.
- ii. Schedule 1 commences the day after the instrument is registered.
- iii. Schedule 2 commences on 13 December 2022.

#### Section 3 - Authority

The instrument is made under the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act).

#### Section 4 - Schedule(s)

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

#### **Schedule 1 - Amendments**

##### ***Aboriginal Land Rights (Northern Territory) Regulations 2007***

#### Item [1] – Regulation 6

Item 1 adds the following parcels of land to the single township prescribed under Regulation 6 of the *Aboriginal Land Rights (Northern Territory) Regulations 2007* (the principal Regulations):

- i. Four Mile, the parcel of land on Groote Eylandt with an area of approximately 19.14 hectares, being Northern Territory Portion 7996(A) delineated on Survey Plan S2022/017

- ii. Little Paradise, the parcel of land on Groote Eylandt with an area of approximately 5.85 hectares, being Northern Territory Portion 7997(A) delineated on Survey Plan S2022/018
- iii. Malkala, the parcel of land on Groote Eylandt with an area of approximately 14.26 hectares, being Northern Territory Portion 7998(A) delineated on Survey Plan S2022/019
- iv. Bartalumba Bay, the parcel of land on Groote Eylandt with an area of approximately 7.86 hectares, being Northern Territory Portion 7999(A) delineated on Survey Plan S2022/020

**Item [2] – Paragraphs 7(1)(a)**

This item repeals paragraph 7(1)(a) of the principal Regulations and substitutes that the Executive Director has the functions prescribed by the regulations if an approved entity holds, or may become the holder of, a lease (the ‘main interest’) granted under section 19A of the Act.

**Schedule 2 – Amendments commencing 13 December 2022**

***Aboriginal Land Rights (Northern Territory) Regulations 2007***

**Item [1] – Regulations 5 to 6AA**

This item repeals regulations 5, 5AA, 5A, 6 and 6AA of the *Aboriginal Land Rights (Northern Territory) Regulations 2007* (the principal Regulations). The prescribed township land in the principal Regulations does not need to be prescribed in those Regulations because the land will be included in the *Aboriginal Land Rights (Northern Territory) (Townships) Instrument 2022*, which will commence on 13 December 2022.

The amendment reflects the intended operation of the Act following amendments made by item 14 of Schedule 2 to the Amendment Act. New subsection 3AB(3A) of the Act, which will commence on 13 December 2022, will permit the Minister to prescribe areas of land as townships by legislative instrument.

## ATTACHMENT B

### 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 Regulations 2022**

The Aboriginal Land Rights (Northern Territory) Amendment Regulations 2022 (Amendment Regulations) are 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*.

#### **Overview of the Disallowable Legislative Instrument**

The Amendment Regulations amend the *Aboriginal Land Rights (Northern Territory) Regulations 2007* (the Regulations) to:

- prescribe additional areas of township land vested in the Anindilyakwa Land Trust to incorporate additional communities into the Groote region township lease;
- repeal prescriptions of township land to allow for township lease areas to be prescribed by instrument as of 13 December;
- clarify certain functions of the Executive Director of Township Leasing to confirm that administrative support services can be provided to approved community township leasing entities.

#### **Human rights implications**

This statement of compatibility includes an assessment of whether the Amendment Regulations are compatible with human rights. ‘Human rights’ include the following rights and freedoms, recognised or declared by the following international instruments:

- i. the *right to self-determination* in Article 1 of International Covenant on Civil and Political Rights (ICCPR), Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Articles 3 and 4 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP); and
- ii. the *right to enjoy and benefit from culture* in Article 27 of the ICCPR and Article 15 of the ICESCR.

#### *The Right to Self-Determination*

1. The right to self-determination is set out in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. The right to self-determination entails the entitlement of peoples to have control over their destiny and to be treated respectfully. This includes peoples being free to collectively pursue their economic, social and cultural development without outside interference. The right to self-determination is a collective right applying to groups of ‘peoples’.
3. The right is also contained in Articles 3 and 4 of the UNDRIP. Article 4 specifically notes that in exercising the right to self-determination, Indigenous peoples have ‘the right to autonomy ... as well as ways and means for financing their autonomous functions’. UNDRIP does not create legally binding obligations, but informs the way

governments engage with and protect the rights of Indigenous peoples. Article 18 provides that ‘Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions’. Aboriginal communities in the Northern Territory recognise the cultural and economic value of township leasing under subsection 19A of the Act, which provides for decisions about land use to be made locally by traditional owners.

4. The Amendment Regulations facilitate the self-determination of Indigenous Australians by prescribing additional township land vested in the Anindilyakwa Land Trust for the purposes of the Act. This land will become part of the Groote Eylandt region township lease, which is scheduled to be transferred by the Executive Director of Township Leasing on 1 July 2022 to the Anindilyakwa Royalties Aboriginal Corporation (the ARAC). From this date the ARAC, which is a local Aboriginal and Torres Strait Islander corporation, will be responsible for the administration of dealings in land under the lease, including managing existing and new interests, rental streams, and facilitating local economic development opportunities. This will enhance local Aboriginal control over decision-making in relation to the township land.

#### *The right to enjoy and benefit from culture*

1. The right to enjoy and benefit from culture is contained in Article 27 of the ICCPR and Article 15 of the ICESCR.
2. Article 27 of the ICCPR protects the rights of individuals belonging to ethnic, religious and linguistic minorities in a country to enjoy their own culture, practice their own religion and use their own language. The UN Human Rights Committee has stated that ‘the enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them’.
3. Prescribing additional land to be part of the Groote Eylandt region township lease will further assist in the promotion of cultural heritage and the development of a cultural economy. ARAC will be able to further regulate and administer dealings in land under the lease, maximising outputs that can be contributed to cultural pursuits.
4. The right to enjoy and benefit from culture is therefore furthered in parallel with the promotion of self-determination.

The measures described at (b) to (d) under the heading ‘Overview of the Disallowable Legislative Instrument’ above are technical in nature and do not have any human rights implications.

#### **Conclusion**

The Amendment Regulations are compatible with human rights as those provisions that engage human rights would promote the right to self-determination and would indirectly promote the right to enjoy and benefit from culture.