

South Australia

**ALICE SPRINGS TO DARWIN RAILWAY (SPECIAL PROVISIONS)
REGULATIONS 2000**

REGULATIONS UNDER THE ALICE SPRINGS TO DARWIN RAILWAY ACT 1997

*Alice Springs to Darwin Railway (Special Provisions)
Regulations 2000*

being

No. 282 of 2000: *Gaz.* 21 December 2000, p. 3755¹

¹ Came into operation 21 December 2000: reg. 2.

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SUMMARY OF PROVISIONS

1. Citation
2. Commencement
3. Interpretation
4. Amendment of Act

Citation

1. These regulations may be cited as the *Alice Springs to Darwin Railway (Special Provisions) Regulations 2000*.

Commencement

2. These regulations will come into operation on the day on which the *Alice Springs to Darwin Railway (Miscellaneous) Amendment Act 2000* comes into operation.

Interpretation

3. In these regulations, unless the contrary intention appears—

"Act" means the *Alice Springs to Darwin Railway Act 1997*.

Amendment of Act

4. Pursuant to section 14(2) of the Act, the Act is amended—

(a) by inserting in section 6(1)(c) ", and to grant indemnities in connection with the authorised project" after "in connection with the authorised project";

(b) by inserting after subsection (2) of section 10 the following subsections:

(3) For the purposes of subsection (1), an interest or right does not include an interest or right granted to or by the AustralAsia Railway Corporation or the consortium.

(4) Without limiting subsection (1), the modification of interests and rights under that subsection operates so as to enable the consortium to construct, operate and maintain a railway over a road that intersects with the rail corridor.

(5) Despite any other Act or law, if a road intersecting the rail corridor established between Tarcoola and the Northern Territory is permanently closed, the land comprising that part of the road that intersects the rail corridor merges with the corridor and becomes subject to any lease or sublease over that part of the corridor.

(6) Despite any other law, fixed railway infrastructure within the rail corridor established between Tarcoola and the Northern Territory border does not merge with the land to which it is affixed and may be dealt with and disposed of as personal property.;

(c) by inserting in section 11(1) "registered" after "For the purposes of any";

(d) by striking out from paragraph (a) of section 11(1) "(as in force from time to time)" and substituting "(as enacted as Act No. 1 of 2000 of the Northern Territory without amendment)";

(e) by striking out subsections (2) to (7) (inclusive) of section 11 and substituting the following subsections:

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(2) Relief against forfeiture of a lease (whether under section 138 or 139 of the applied provisions or any other law of the State, including the common law and the law of equity) is not available if the lease is being terminated as a consequence of the lawful termination of the Concession Deed.

(3) On an application for relief against forfeiture of a registered lease of land forming part of the rail corridor established between Tarcoola and the Northern Territory border under section 138 of the applied provisions, subject to subsections (2) and (11), the court must grant the relief unless the court is satisfied—

- (a) that there has been a material breach of the lease; and
- (b) that written notice of the breach has been given to the lessee, any sublessee under a registered sublease and the holder of any registered security over the lease or any registered sublease requiring—
 - (i) in the case of a remediable breach, including a breach for non-payment of rent, the breach to be remedied; or
 - (ii) in the case of a non-remediable breach, the payment of reasonable compensation; or
 - (iii) in the case of a breach which is partly remediable and partly non-remediable, the breach to be remedied to the extent that it is capable of remedy and otherwise the payment of reasonable compensation; and
- (c) that a reasonable period of time to comply with the requirements set out in the notice under paragraph (b) has been given; and
- (d) in the case of a breach which is remediable or partly remediable, that the breach has not been remedied and none of the lessee, any sublessee under a registered sublease or the holder of any registered security over the lease or any registered sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and
- (e) in the case of a breach which is non-remediable or partly non-remediable, that reasonable compensation has not been paid.

(4) If a lessee under a registered lease is not entitled to relief under subsection (3), subject to subsection (2), the court may grant the lessee relief in accordance with section 138(2) and (3) of the applied provisions.

(5) Section 138 of the applied provisions (as modified by the operation of subsection (3) of this section) is to operate as if the section included a provision allowing a sublessee under a registered sublease or the holder of any registered security over a registered sublease to make application under that section in relation to the registered headlease (and such an application may be made even though the headlessee has not applied for relief under that section).

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(6) Section 139 of the applied provisions is to operate as if the section included a provision allowing the holder of any registered security over a registered sublease to make application under that section as if the holder of the security were a sublessee.

(7) On an application in relation to a registered headlease of land forming part of the rail corridor established between Tarcoola and the Northern Territory border under section 139 of the applied provisions by a sublessee under a registered sublease or the holder of any registered security over a registered sublease, the court must, subject to subsections (8) and (11), grant the application unless—

- (a) the granting of the application would be inconsistent with a decision on an application under section 138 of the applied provisions; or
- (b) the court is satisfied, in respect of any breach of the headlease, that the headlessee has not had a reasonably opportunity—
 - (i) to remedy the breach or to pay reasonable compensation or both; or
 - (ii) to apply for relief against forfeiture, taking into account—
 - (iii) sections 137 and 138 of the applied provisions and this section; and
 - (iv) the principle that the preservation of the headlease (and any registered sublease) by way of orders under section 138 of the applied provisions (as modified by the operation of subsection (3) of this section) is to be preferred to the making of an order under section 139 of the applied provisions; or
- (c) the court is satisfied, in respect of any breach of the headlease that is attributable to any act, omission or default of the sublessee or the holder of any registered security over the sublease—
 - (i) that written notice of the breach has been given to the sublessee and the holder of any registered security over the sublease requiring—
 - (A) in the case of a remediable breach, including a breach for non-payment of rent, the breach to be remedied; or
 - (B) in the case of a non-remediable breach, the payment of reasonable compensation; or

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(C) in the case of a breach which is partly remediable and partly non-remediable, the breach to be remedied to the extent that it is capable of remedy and otherwise the payment of reasonable compensation; and

(ii) that a reasonable period of time to comply with the requirements set out in the notice under subparagraph (i) has been given; and

(iii) in the case of a breach which is remediable or partly remediable, that the breach has not been remedied and neither the sublessee nor the holder of any registered security over the sublease is diligently pursuing the remedy of the breach or that part of the breach that is remediable; and

(iv) in the case of a breach which is non-remediable or partly non-remediable, that reasonable compensation has not been paid.

(8) Subsection (7) does not derogate from the operation of section 139(2) and (3) of the applied provisions.

(9) If a sublessee under a registered sublease is not entitled to an order under subsection (7), subject to subsection (2), the court may grant an order in accordance with section 139 of the applied provisions.

(10) If the court makes an order under section 139(1)(d) of the applied provisions in respect of a registered lease of land forming part of the rail corridor established between Tarcoola and the Northern Territory border, the lease granted to the sublessee by virtue of the order (the "**new lease**") is to include a provision to the effect—

(a) that despite any law to the contrary or any provisions as to the period of the new lease, the new lease will be automatically and simultaneously determined on the termination of the Concession Deed and without necessity of notice; and

(b) that if the new lease is determined in the manner contemplated by paragraph (a), the new lease and any interests derived or dependent on the new lease will be determined for all time; and

(c) that, for the avoidance of doubt, it is expressly acknowledged and agreed by the parties to the new lease that, on the termination of the Concession Deed, the new lease is intended to and will expire by effluxion of time, despite any law.

(11) The court must not make an order under section 138 or 139 of the applied provisions in relation to a registered headlease on the application of a sublessee under a registered sublease or the holder of any registered security over a registered sublease unless—

(a) the headlessee; and

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- (b) any sublessee under a registered sublease or holder of any registered security over a registered sublease who is not the applicant,

has had notice of the application and the court has given each of those persons who is entitled to such notice a reasonable opportunity to be heard on the application.

(12) In this section, unless the contrary intention appears—

"applied provisions" means the provisions applied by subsection (1)(a);

"lease" includes—

- (a) a sublease; and
- (b) a lease granted by virtue of an order under section 139(1)(d) of the applied provisions;

"lessee" includes—

- (a) a sublessee; and
- (b) the executors, administrators and assigns of a lessee.;

- (f) by inserting in section 12(6) "relevant" after "in any such".