

South Australia

## **Land Acquisition (Variation) Regulations 2003**

under the *Land Acquisition Act 1969*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Land Acquisition (Variation) Regulations 2003*.

#### **2—Commencement**

These regulations will come into operation on 1 September 2003.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of *Land Acquisition Regulations 1991*

### 4—Substitution of regulation 6A

Regulation 6A—delete the regulation and substitute:

#### **6A—Notice of intention to acquire land**

For the purposes of section 10(2)(b)(ii)(B) of the Act, the following supporting materials must be exhibited:

- (a) in the case of service by publication in a newspaper or relevant special-interest publication in accordance with the *Native Title (South Australia) Act 1994*—a copy of an extract from the publication containing the notice and identifying the name of the publication and the date of publication;
- (b) in the case of service by giving a copy of the notice personally or by post or by some other agreed method in accordance with the *Native Title (South Australia) Act 1994*—a copy of the notice so served.

#### **6B—Explanation of acquisition scheme may be required**

For the purposes of section 11(2)(b)(iii)(B) and 12(2)(b)(iii)(B) of the Act, an Aboriginal group must authorise the representative Aboriginal body to act on its behalf as follows:

- (a) the authorisation must be in writing; and
- (b) the authorisation must—
  - (i) name the persons comprising the Aboriginal group claiming native title or otherwise define the Aboriginal group sufficiently clearly so that it can be ascertained whether any particular person is a member of the group; and
  - (ii) state that the Aboriginal group does not have, and is not part of another Aboriginal group that has, a registered representative; and
  - (iii) define the land to which the claim relates with sufficient particularity to enable the boundaries of the area covered by the claim and any areas within those boundaries that are not covered by the claim to be readily identified; and
  - (iv) state the nature of the rights conferred by the native title claimed and the nature of activities that may be carried out pursuant to those rights; and
  - (v) state the factual basis on which it is asserted that the Aboriginal group holds the native title claimed; and

- (c) the authorisation must expressly authorise the representative Aboriginal body to act under section 11 and 12 of the Act on behalf of the group in relation to a specified notice of intention to acquire land to which the native title claim relates; and
- (d) the authorisation must be signed by a member of the group authorised to sign on behalf of the group following either—
  - (i) a process of decision making recognised by the traditional laws or customs of the Aboriginal group; or
  - (ii) a process of decision making agreed to and adopted by the Aboriginal group in relation to the decision or in relation to decisions of that kind.

### **5—Variation of Schedule—Forms**

- (1) Schedule, Form 1—delete "*[This form is to be used for any acquisition other than an acquisition of native title land for the purpose of conferring proprietary rights or interests on a person other than the Crown or an instrumentality of the Crown.]*" and substitute:

*[This form is to be used for an acquisition other than one to which Part 4 Division 1 of the Act applies.]*

- (2) Schedule, Form 1, clause 1—after the first sentence insert:

(If—

- the Authority is the Crown or an instrumentality of the Crown; and
- the Authority proposes to acquire native title; and
- the Authority does not propose to acquire the land for the purpose of conferring rights or interests on someone other than the Crown or an instrumentality of the Crown,

the notice must state that the purpose of the acquisition is to confer rights or interests in relation to the land on the Crown or an instrumentality of the Crown.)

- (3) Schedule, Form 1, clause 2—before "the representative Aboriginal body" insert:

, in certain cases,

- (4) Schedule, Form 1, clause 3—before "the representative Aboriginal body" insert:

, in certain cases,

- (5) Schedule, Form 1—after clause 3 insert:

**3A—Additional right of native title parties to object to prescribed private acquisition (section 12B)**

Within 2 months or, if an explanation of the reasons for the acquisition is required, within 2 months after the explanation is provided, native title parties may, by written notice to the Minister, object to a prescribed private acquisition<sup>2</sup> so far as it affects their registered native title rights.

**Note—**

- The Minister must consult any native title parties who object about ways of minimising the impact of the acquisition project on registered native title rights and, if relevant, access to the land.
- The Attorney-General must, at the request of a native title party who has made an objection under this section, appoint an independent person or body to hear the objection.
- Before making such an appointment, the Attorney-General must consult the Minister and the native title party.
- If the independent person or body hearing an objection under this section makes a determination upholding the objection, or that contains conditions about the acquisition that relate to registered native title rights, the determination must be complied with unless—
  - the Minister responsible for indigenous affairs is consulted; and
  - the consultation is taken into account; and
  - it is in the interests of the State not to comply with the recommendation.

- (6) Schedule, Form 1, clause 4, note, dot point 3—after "party" insert:

who is the holder of native title

- (7) Schedule, Form 1, clause 4, note, dot point 4—delete "12 months" and substitute:

18 months or a longer period fixed under section 15(4a) of the *Land Acquisition Act 1969*

- (8) Schedule, Form 1, clause 5, italic note at foot—after "1886" insert:

*and the land is not native title land*

- (9) Schedule, Form 1, note 1 at foot of form—delete the note and substitute:

1 The notice must be given to each person whose interest in the land is subject to acquisition, or such of those persons as, after diligent inquiry, become known to the Authority. If the Authority proposes to acquire native title in land, the notice must also be given to—

- if there is a native title declaration for the land—the registered representative of the native title holders and the relevant representative Aboriginal body;

- if there is no native title declaration for the land—to all persons who hold, or may hold, native title in the land (see Part 5 of the *Native Title (South Australia) Act 1994*).

2 A prescribed private acquisition means—

- an acquisition by the Crown or an instrumentality of the Crown of native title in land for the purpose of conferring rights or interests in relation to the land on a person other than the Crown or an instrumentality of the Crown so that an infrastructure facility may be provided; or
- an acquisition by the Crown or an instrumentality of the Crown of native title in land wholly within a town or city for the purpose of conferring rights or interests on a person other than the Crown or an instrumentality of the Crown; or
- an acquisition by the Crown or an instrumentality of the Crown of native title in land situated on the seaward side of the mean high-water mark of the sea for the purpose of conferring rights or interests on a person other than the Crown or an instrumentality of the Crown; or
- an acquisition of native title in land that is neither made by the Crown or an instrumentality of the Crown nor made for the purpose of conferring rights or interests on the Crown or an instrumentality of the Crown.

- (10) Schedule, Form 2—delete "*[This form is to be used for a proposed acquisition of native title land for the purpose of conferring proprietary rights or interests on a person other than the Crown or an instrumentality of the Crown.]*" and substitute:

*[This form is to be used for a proposed acquisition of native title if the acquisition is to be made by the Crown or an instrumentality of the Crown for the purpose of conferring rights or interests on a person other than the Crown or an instrumentality of the Crown and the proposed acquisition is not a prescribed private acquisition.]*

- (11) Schedule, Form 2, clause 1—delete "proprietary"

- (12) Schedule, Form 2, clause 1—before the last sentence insert:

Aboriginal groups who are not registered under the law of the State or the Commonwealth as holders of or claimants to native title in the land but want to participate in the negotiations must take the necessary steps under that law to become native title parties in relation to the relevant land within three months after service of this notice. In order to be appropriate native title parties with whom the Authority must negotiate under section 19 of the *Land Acquisition Act 1969*, the parties must be registered as holders of or claimants to native title in the land on the date falling four months after service of this notice.

- (13) Schedule, Form 2, clause 2—before "the representative Aboriginal body" insert:

, in certain cases,

- (14) Schedule, Form 2, clause 3—before "the representative Aboriginal body" insert:  
    , in certain cases,
- (15) Schedule, Form 2, clause 4—before "land" first occurring insert:  
    native title in the
- (16) Schedule, Form 2, clause 4, note, dot point 1—delete "2" and substitute:  
    4
- (17) Schedule, Form 2, clause 4, note, dot point 4—delete "(but compensation is not to be determined at this stage)" and substitute:  
    (but a final determination of compensation cannot be made at this stage)
- (18) Schedule, Form 2, clause 4, note, dot point 5—delete the dot point
- (19) Schedule, Form 2, clause 4, note, dot point 7—after "State" insert:  
    or in the national interest
- (20) Schedule, Form 2, clause 5, note, dot point 3—after "party" insert:  
    who is the holder of native title
- (21) Schedule, Form 2, clause 5, note, dot point 4—delete "12 months" and substitute:  
    18 months or a longer period fixed under section 15(4a) of the *Land Acquisition Act 1969*
- (22) Schedule, Form 2, clause 6 (including the italic note at the foot of the clause)—delete the clause
- (23) Schedule, Form 2, note 1 at foot of form—delete the note and insert:  
    1       The notice must be given to—
- if there is a native title declaration for the land—the registered representative of the native title holders and the relevant representative Aboriginal body;
  - if there is no native title declaration for the land—to all persons who hold, or may hold, native title in the land (see Part 5 of the *Native Title (South Australia) Act 1994*).
- In addition, the Authority must—
- give a copy of the notice of intention to acquire the land to the Registrar of the Environment, Resources and Development Court and the Commonwealth Registrar; and
  - as soon as practicable after completing all requirements for service of the notice, give the Registrar of the Environment, Resources and Development Court, the Commonwealth Registrar, the relevant representative Aboriginal body and any other prescribed persons a statutory declaration—
    - specifying the steps that have been taken to effect service, the date of each step, and when the requirements for service were completed; and

- exhibiting any supporting materials required under the regulations.

NOTE: The periods referred to in this notice run from the date when the requirements for service of the notice are completed. Information about when the requirements for service were completed, as disclosed in the Authority's statutory declaration, can be obtained by contacting the Registrar of the Environment, Resources and Development Court, the Commonwealth Registrar or the relevant representative Aboriginal body.

- (24) Schedule, Form 4, clause 3—delete "3 months" and substitute:

6 months

- (25) Schedule, Form 5, clause 2—delete all words after the first sentence

- (26) Schedule, Form 6, clause 2—at the end of the clause insert:

(If Part 4 Division 1 of the Act applies and the Authority has already paid an amount into the Environment Resources and Development Court, the amount (if any) paid into the Land and Valuation Court will be the amount by which the amount of the offer exceeds that amount already paid into the Environment, Resources and Development Court.)

- (27) Schedule, Form 6, clause 3—delete the clause and substitute:

### **3—Reference of matters into Court**

The Authority or a claimant for compensation may refer a question arising in the course of negotiations into the Land and Valuation Court (see section 23C of the *Land Acquisition Act 1969*).

The principles for determining compensation are set out in section 25 of the *Land Acquisition Act 1969*.

- (28) Schedule, Form 7, clause 4 (including the italic note at the foot of the clause)—delete the clause

- (29) Schedule, Form 7, note 1 at foot of form—delete the note and substitute:

1        The notice must be given to the owner (including a person who holds native title in land) and occupier of the land at least 7 days before entry.

- (30) Schedule, Form 8, clause 2—at the end of the clause insert:

However, the Authority is not authorised to take stone, gravel, earth or other material from land for the purpose of extracting, producing or refining minerals from it or processing it by non-mechanical means.

- (31) Schedule, Form 8, clause 4 (including the italic note at the foot of that clause)—delete the clause

- (32) Schedule, Form 8, note 1 at foot of form—delete the note and substitute:

1        The notice must be given to the owner (including a person who holds native title in land) and occupier of the land at least 7 days before entry.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

with the advice and consent of the Executive Council  
on 21 August 2003

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