



**AUSTRALIAN CAPITAL TERRITORY**

**NATIONAL LAND ORDINANCE 1989  
(AND ASSOCIATED PRE SELF-GOVERNMENT LAWS)**

This collection was prepared on 15 January 2009  
taking into account amendments up to Ordinance No. 1 of 1998

Prepared by the National Capital Authority, Canberra

### **Notes about this collection**

Section 27 of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth provides that the relevant Commonwealth Minister may declare specified areas of land in the Territory to be National Land, as distinguished from Territory Land. When Self-Government came into effect on 11 May 1989, all laws in the Territory except Commonwealth laws and the Ordinances of the Territory specified in Schedule 3 (see now Schedule 5) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth, were converted into enactments by virtue of section 34 of that Act. As a result of this conversion 13 laws which related to land management in the Territory no longer applied to National Land. However, under the *National Land Ordinance 1989*, the relevant Commonwealth Minister is generally responsible for the management of National Land. In order to facilitate that management the Ordinance adopts, modifies and applies to National Land certain provisions of pre Self-Government laws as they existed immediately before Self-Government.

This collection has been prepared to enable easier access to the law applying to National Land. The collection includes an up-to-date consolidation of the text of each affected law and the full amendment history, both pre Self-Government and under the *National Land Ordinance 1989*.

The provisions of the 13 laws herein may only be modified by the relevant Commonwealth Minister through an amendment of the *National Lands Ordinance 1989*. Any such modifications would be incorporated into the appropriate law and a new edition of this collection made available.

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## AUSTRALIAN CAPITAL TERRITORY

### NATIONAL LAND ORDINANCE 1989

**Ordinance No. 39 of 1989 as amended**

made under the

*Seat of Government (Administration) Act 1910*

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This compilation was prepared on 15 January 2009  
taking into account amendments up to Ordinance No. 1 of 1998

Prepared by the National Capital Authority, Canberra

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## An Ordinance relating to National Land

### Short title

1. This Ordinance may be cited as the *National Land Ordinance 1989*.<sup>1</sup>

### Commencement

2. This Ordinance commences on the date of commencement of section 22 of the *Australian Capital Territory (Self-Government) Act 1988*.

### Interpretation

3. (1) In this Ordinance, unless the contrary intention appears—

“applied provisions” means the provisions that have effect with respect to National Land by virtue of subsection 5 (1);

“Australian public servant” means an officer or employee within the meaning of the *Public Service Act 1922*, other than a member of the transitional staff within the meaning of the *A.C.T Self-Government (Consequential Provisions) Act 1988*;

“City Area” means the City Area within the meaning of the *City Area Leases Act 1936* of the Territory as in force immediately before its repeal;

“Planning and Land Management Act” means the *Australian Capital Territory (Planning and Land Management) Act 1988*;

“relevant pre-Self-Government law” means each of the following laws, as in force immediately before Self-Government Day:

- (a) the *City Area Leases Ordinance 1936*;
- (b) the City Area Leases Regulations;
- (c) the Crown Lands Act 1884 of the State of New South Wales in its application in the Territory;
- (d) the Dedication by User Limitation Act 1902 of the State of New South Wales in its application in the Territory;
- (e) the *Lakes Ordinance 1976*;
- (f) the *Leases Ordinance 1918*;
- (g) the Leases Regulations;
- (h) the *Leases (Special Purposes) Ordinance 1925*;
- (i) the *Protection of Lands Ordinance 1937*;
- (j) the Public Roads Act 1902 of the State of New South Wales in its application in the Territory;
- (k) the *Recovery of Lands Ordinance 1929*;
- (l) the *Roads and Public Places Ordinance 1937*;
- (m) the *Trespass on Commonwealth Lands Ordinance 1932*;

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“Self-Government Day” means the date of commencement of section 22 of the *Australian Capital Territory (Self-Government) Act 1988*;

“Territory Act” means—

- (a) an Act passed by the Legislative Assembly for the Australian Capital Territory; or
- (b) a law that is—
  - (i) an enactment within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* by virtue of section 34 of that Act; or
  - (ii) to be taken to be an enactment by virtue of subsection 10 (3) or 12 (2) or (3) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*;

“Territory public servant” means—

- (a) a member of the public service established by section 54 of the *Australian Capital Territory (Self-Government) Act 1988*; or
- (b) a member of the transitional staff within the meaning of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

(2) In this Ordinance, unless the contrary intention appears, “land”, “management”, “National Land” and “Territory Land” have the same respective meanings as in the Planning and Land Management Act.

### **Management of National Land**

4. (1) With the approval of the Minister, the National Capital Authority is to manage National Land designated in writing by the Minister as land required for the special purposes of Canberra as the National Capital

(2) The Minister for Finance and Administration is to manage all other National Land.

(3) Nothing in this section shall be taken to limit the performance by the Minister administering the *National Land (Parking) Ordinance 1994* of functions under the provisions of Territory laws applied by that Ordinance.

### **Application of laws**

5. (1) The provisions of the relevant pre-Self-Government laws have effect with respect to National Land on and after Self-Government Day, subject to—

- (a) this section; and
- (b) the modifications specified in the Schedule.

(2) Unless the contrary intention appears, nothing in the applied provisions shall be taken to have effect—

- (a) with respect to Territory Land; or
- (b) so as to make unlawful conduct that is lawful under a Territory Act.

(3) The applied provisions have effect with respect to National Land as if—

- (a) a reference in any of those provisions to a relevant pre-Self-Government law were a reference to the provisions of that law having effect by virtue of subsection (1); and

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- (b) a reference in any of those provisions to a particular provision of a relevant pre-Self-Government law were a reference to that provision having effect by virtue of subsection (1).

(4) The applied provisions of the *City Area Leases Ordinance 1936* and the City Area Leases Regulations have effect with respect to National Land as if, unless the contrary intention appears—

- (a) a reference in any of those provisions to land that is Commonwealth land were a reference to National Land; and
- (b) a reference in any of those provisions to a lease or sub-lease included a reference to a lease or sub-lease that—
- (i) was granted before Self-Government Day under the corresponding provision of the former Ordinance; and
  - (ii) exists in respect of land that is, on or after Self-Government Day, National Land.

(5) The applied provisions of the *Lakes Ordinance 1976* have effect with respect to National Land as if—

- (a) a reference in any of those provisions to a lake were a reference to so much of Lake Burley Griffin as is National Land;
- (b) a reference in any of those provisions to a lake area were a reference to so much of the lake area as is National Land; and
- (c) a reference in any of those provisions to a member of the Police Force of the Territory were a reference to a police officer.

(6) The applied provisions of the *Leases Ordinance 1918*, the Leases Regulations and the *Leases (Special Purposes) Ordinance 1925* have effect with respect to National Land as if, unless the contrary intention appears—

- (a) a reference in any of those provisions to Commonwealth land, Crown land, land vested in the Commonwealth or land acquired by the Commonwealth were a reference to National Land; and
- (b) a reference in any of those provisions to a lease, tenancy or occupation included a reference to a lease, tenancy or occupation that—
- (i) was granted before Self-Government Day under the corresponding provision of the former Ordinance or Regulations; and
  - (ii) exists in respect of land that is, on or after Self-Government Day, National Land.

(7) The applied provisions of the *Protection of Lands Ordinance 1937* have effect with respect to National Land as if—

- (a) a reference in any of those provisions to lands or Commonwealth land were a reference to National Land;
- (b) a reference to an off-street parking area were a reference to such an area that is National Land; and



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(c) a reference to a public street were a reference to a public street that is National Land.

(8) The applied provisions of the *Recovery of Lands Ordinance 1929* have effect with respect to National Land as if—

- (a) a reference in any of those provisions to land were a reference to National Land;
- (b) a reference in any of those provisions to a lease were a reference to a lease of National Land;
- (c) a reference in any of those provisions to a lease that has been determined included a reference to a lease determined before Self-Government Day in respect of land that is, on or after that day, National Land; and
- (d) a reference in any of those provisions to a member of the Police Force were a reference to a police officer.

(9) The applied provisions of the *Roads and Public Places Ordinance 1937* have effect with respect to National Land as if a reference in any of those provisions to a public place, public road or temporary road were a reference to such a place or road that is National Land.

(10) The applied provisions of the *Trespass on Commonwealth Lands Ordinance 1932* have effect with respect to National Land as if—

- (a) a reference in any of those provisions to land, a road or any other thing belonging to, maintained by, or under the control of, the Commonwealth were a reference to land or a thing that is, or is on, National Land; and
- (b) a reference in any of those provisions to a member of the Police Force of the Territory were a reference to a police officer.

### **Occupancy of buildings**

**5A. (1)** Where, under an applied provision, the Commonwealth grants a lease of land with improvements, a person may occupy or use, or permit another person to occupy or use, the improvements whether or not a certificate or other instrument permitting occupancy or use of the improvements has been issued under the Building Act or any of the laws repealed by that Act.

(2) Nothing in subsection (1) prevents the application of the Building Act to—

- (a) the alteration, after the grant of the lease, of the improvements which were on the land at the time of the grant of the lease; or
- (b) the construction, after the grant of the lease, of other improvements on the land.

(3) In this section—

“Building Act” means the *Building Act 1972* of the Territory.

### **Arrangements with Territory**

**6. (1)** The Minister may, on behalf of the Commonwealth, enter in to an arrangement with the Territory with respect to the administration of the applied provisions by the Territory on behalf of the Commonwealth.

(2) Without limiting the generality of subsection (1), an arrangement may provide for the services of Territory public servants to be made available to the Minister for the exercise of powers or the performance of functions under the applied provisions.

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## Regulations

7. The Minister may make regulations, not inconsistent with this Ordinance, prescribing matters—

- (a) required or permitted by this Ordinance to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

## Transitional

8. (1) Where—

- (a) immediately before Self-Government Day, a person held an office or position under a provision of a relevant pre-Self-Government law; and
- (b) the provision is an applied provision;

the person shall, on and after Self-Government Day, be taken to hold the office or position under the applied provision.

(2) Where—

- (a) at any time before Self-Government Day—
  - (i) an instrument was made, granted or issued;
  - (ii) any other act or thing was done; or
  - (iii) a decision was made;under, or for the purposes of, a provision of a relevant pre-Self-Government law;
- (b) immediately before Self-Government Day the instrument, act, thing or decision had effect in relation to land that is, on or after that day, National Land; and
- (c) the provision is an applied provision;

the instrument, act, thing or decision has effect on and after Self-Government Day in relation to that land as if it had been made, granted, issued, done or made under, or for the purposes of, the applied provision.

(3) A reference in an instrument referred to in subsection (2) to land or a matter related to land (being land that is, on or after Self-Government Day, National Land) shall, except in relation to matters occurring before that day, be read as a reference to National Land or a matter related to National Land, as the case may be.

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## SCHEDULE

Subsection 5 (1)

### MODIFICATIONS OF APPLIED PROVISIONS

#### *City Area Leases Ordinance 1936*

##### **Section 2—**

Omit the section.

##### **Subsection 3 (1) (definition of “lease”)—**

Omit paragraphs (b) and (c), substitute the following word and paragraph:

“or (b) a lease granted under a repealed ordinance and continued in force by subsection 2 (2) of the *City Area Leases Act 1936* of the Territory;”.

##### **Subsection 3 (1) (definition of “lessee”)—**

Omit “registered proprietor of a lease”, substitute “proprietor of a lease, whether or not the person is the registered proprietor of the lease, and”.

##### **Subsection 3 (1) (definition of “Real Property Ordinance”)—**

Omit the definition, substitute the following definition:

“ ‘Real Property Act’ means the *Real Property Act 1925* of the Territory;”.

##### **Subsection 3 (1) (definition of “repealed Ordinance”)—**

Omit the definition, substitute the following definition:

“ ‘repealed Ordinance’ means an Ordinance repealed by subsection 2 (1) of the *City Area Leases Act 1936* of the Territory;”.

##### **Subsection 3 (1) (definition of “the Building Controller”)—**

Omit “*Building Ordinance 1972*”, substitute “*Building Act 1972* of the Territory”.

##### **Subsection 3 (1) (definition of “the Secretary”)—**

Omit the definition, substitute the following definition:

“ ‘the Secretary’ means the Secretary of the Department.”.

##### **Paragraphs 3 (3) (a), (b) and (c)—**

Omit the paragraphs, substitute the following paragraphs:

- “(a) who was the proper authority under the repealed Canberra Building Regulations, as in force at the relevant time;
- (b) who was the proper authority or a deputy proper authority under the repealed *Building Ordinance 1964*, as in force at the relevant time; or
- (c) who was or is, at the relevant time, the proper authority or a deputy proper authority under the repealed *Building Ordinance 1964* in its continued application by virtue of subsection 4 (3) of the *Building Act 1972* of the Territory.”.

##### **Section 4—**

Omit the section, substitute the following section:

##### **Application**

“4. This Ordinance applies only with respect to National Land that is in the City Area.”.

##### **Section 5—**

Omit all the words following “land”.

##### **Subsection 6 (1)—**

Omit “may, by notice in the *Gazette*,” substitute “may”.

##### **Subsection 11A (11)—**

Omit “, Department of the Capital Territory”, substitute “of the Department”.

##### **Section 17AA—**

After section 17A, insert—

##### **Minister’s power to grant leases under special arrangements**

“17AA. (1) This section applies to land that the Minister, by notice published in the *Gazette*, determines should, in the public interest, be dealt with under this section.

“(2) The Minister may, on behalf of the Commonwealth—

- (a) enter into a contract for the grant of a lease of land to which this section applies; and

## SCHEDULE—continued

(b) grant such a lease for such period, not exceeding 99 years, as the Minister determines.

“(3) In exercising the powers given by subsection (2), the Minister—

(a) is not obliged to comply with any of the requirements of sections 12A, 13, 14 and 17; and

(b) may proceed by way of auction, tender or direct negotiation, as the Minister thinks fit.”.

### Subsection 19 (8)—

Omit “—1969”, substitute “, as in force immediately before 1 January 1971”.

### Section 28AA—

Omit the section.

### Subparagraph 28DA (2) (d) (ii) and subsection 28DA (3)—

Omit “*Real Property Ordinance 1925-1970*”, substitute “*Real Property Act*”.

### Subsection 29 (3)—

Omit “*Real Property Ordinance 1925*”, substitute “*Real Property Act*”.

### Subsection 30 (2)—

Omit “may, with the consent of the Minister,”, substitute “may”.

### Subsections 31 (6) to (10) (inclusive)—

Omit the subsections, substitute the following subsections:

“(6) Proceedings under subsection (5) may be commenced at any time within 6 months after the commencement of the erection of the fence.

“(7) Subsection (5) applies only where both parcels of land are leased at the time of the commencement of the erection of the fence.

“(8) Where land referred to in subsection (1) or (2) adjoins Territory Land leased under the *City Area Leases Act 1936* of the Territory, subsections (1) to (7) (inclusive) have effect with respect to the adjoining Territory Land as if it were National Land leased under this Ordinance.”.

### Paragraphs 32 (1) (a), (b) and (c)—

Omit the paragraphs, substitute the following paragraphs:

“(a) of the kind referred to in regulation 69A of the repealed Canberra Building Regulations, as in force when the certificate was issued;

(b) of the kind referred to in regulation 69A of the repealed Canberra Building Regulations in its continued application, by virtue of subsection 4 (3) of the *Building Act 1972* of the Territory, when the certificate was issued; or

(c) issued under subsection 53 (2) or (3) of the *Building Act 1972* of the Territory.”.

### Section 32—

Add at the end the following subsection:

“(3) Where land leased under this Ordinance adjoins Territory Land leased under the *City Area Leases Act 1936* of the Territory, subsections (1) and (2) have effect with respect to the adjoining Territory Land as if it were National Land leased under this Ordinance.”.

### Section 37—

Omit the section, substitute the following section:

### Certain provisions not to apply

“37. The applied provisions of the *Leases Ordinance 1918* do not have effect with respect to land that—

(a) is leased under this Ordinance; or

(b) is subject to a lease continued in force by subsection 2 (2) of the *City Area Leases Act 1936* of the Territory and is, on or after Self-Government Day, National Land.”.

## City Area Leases Regulations

### Regulation 2 (definition of “the Ordinance”)—

Omit the definition, substitute the following definition:

“ ‘the Ordinance’ means the applied provisions of the *City Area Leases Ordinance 1936*.”.

### Regulation 3—

Omit the regulation.

### Subregulation 10 (1)—

Omit “, Department of the Capital Territory, Canberra,”, substitute “of the Department”.

### Subregulation 10 (2)—

Omit “, Department of the Capital Territory,”.

## SCHEDULE—continued

### The Schedule—

Omit the Schedule.

### *Lakes Ordinance 1976*

#### Paragraphs 21 (8) (b), 23 (2) (b) and 27 (3) (b)—

Omit the paragraphs, substitute (in each case) the following paragraphs:

- “(b) an Australian public servant or a Territory public servant;
- (ba) a member of the staff of an authority established for a public purpose by or under a Territory Act or a law of the Commonwealth;”.

#### Section 34—

Omit “with an agreement referred to in section 33”, substitute—

“with—

- (a) an agreement referred to in section 33; or
- (b) an agreement referred to in section 33 of the *Lakes Ordinance 1976*, as in force at any time before Self-Government Day, being an agreement that was in force immediately before Self-Government Day.”.

### *Leases Ordinance 1918*

#### Section 3—

Omit “and the *Land Valuation Ordinance 1936*”.

#### Subsection 3AA (1)—

Omit “or the *Land Valuation Ordinance 1936*”.

#### Subsections 3AAA (1) and (3)—

Omit “, after the commencement of the *Leases (Amendment) Ordinance 1982*,”.

#### Section 4A—

Add at the end the following subsection:

“(4) Where National Land leased under this Ordinance adjoins Territory Land leased under the *Leases Act 1918* of the Territory, subsections (2) and (3) have effect with respect to the adjoining Territory Land as if it were National Land leased under this Ordinance.”.

### **Leases Regulations**

#### Regulation 3 (definition of “Returned Soldier”)—

Omit the definition.

#### Regulation 3 (definition of “The Ordinance”)—

Omit the definition, substitute the following definitions:

“ ‘the Ordinance’ means the applied provisions of the *Leases Ordinance 1918*;  
‘veteran’ has the same meaning as in the *Veterans’ Entitlements Act 1986*.”.

#### Paragraph 9 (1) (d)—

Omit “returned soldier”, substitute “veteran”.

### *Leases (Special Purposes) Ordinance 1925*

#### Section 2—

Omit the section.

#### Subsections 5AA (1) and (2)—

Omit “*Real Property Ordinance 1925-1930*”, substitute “*Real Property Act 1925* of the Territory”.

#### Subsection 5AB (1)—

Omit the subsection, substitute the following subsection:

“(1) This section applies only in relation to a lease granted under subsection 3 (1) or (3).”.

#### Section 5AC—

Omit the section, substitute the following section:

#### Application of sections 5AD, 5A and 5B

“5AC. Sections 5AD, 5A and 5B apply only in relation to a lease granted under section 3 (2).”.

#### Subsections 6 (1) and (2)—

Omit “*City Area Leases Ordinance 1924-1925*”, substitute “applied provisions of the *City Area Leases Ordinance 1924*”.

#### Subsection 6 (5)—

## SCHEDULE—continued

Omit the subsection, substitute the following subsection:

“(5) Where land referred to in subsection (1) adjoins Territory Land leased under—

- (a) the *City Area Leases Act 1924* of the Territory; or
- (b) the *Leases (Special Purposes) Act 1925* of the Territory;

subsections (1) to (4) (inclusive) have effect with respect to the adjoining Territory Land as if it were National Land leased under this Ordinance.”.

### Section 9—

Omit the section, substitute the following section:

#### **Certain provisions not to apply**

“9. Nothing in the applied provisions of the *Leases Ordinance 1918* or the *City Area Leases Ordinance 1936* has effect with respect to land leased under this Ordinance.”.

### *Protection of Lands Ordinance 1937*

#### **Section 2 (definition of “authorized officer”)—**

Omit “an officer”, substitute “a person”.

#### **Section 2 (definition of “Motor Traffic Ordinance”)—**

Omit the definition, substitute the following definition:

“ ‘Motor Traffic Act’ means the *Motor Traffic Act 1936* of the Territory;”.

#### **Section 2 (definitions of “off-street parking area”, “public street” and “vehicle”)—**

Omit “Motor Traffic Ordinance”, substitute “Motor Traffic Act”.

#### **Subsection 7 (2)—**

Insert “the applied provisions of” before “the *Roads and Public Places Ordinance 1937*”.

#### **Paragraph 10 (2) (a)—**

Omit “other”.

#### **Paragraph 10 (2) (b)—**

Insert “the applied provisions of” before “the *Roads and Public Places Ordinance 1937*”.

#### **Section 16—**

Insert “of the Department” after “Secretary”.

### *Recovery of Lands Ordinance 1929*

#### **The Schedule (the headings to Forms A, B, C, D and E)—**

Omit “*Recovery of Lands Ordinance 1929*”, substitute “*Recovery of Lands Ordinance 1929* (provisions applied to National Land by the *National Land Ordinance 1989*)”.

### *Roads and Public Places Ordinance 1937*

#### **Section 2 (definition of “authorized officer”)—**

Omit “an officer”, substitute “a person”.

#### **Subsection 15G (2)—**

Omit the subsection.

#### **Subsection 15G (3)—**

Omit the definition of “presidential member”.

#### **Sections 15S and 15T—**

Omit the sections.

### *Trespass on Commonwealth Lands Ordinance 1932*

#### **Section 3 (definitions of “carriageway”, “off-street parking area”, “public street” and “vehicle”)—**

Omit “Motor Traffic Ordinance”, substitute “Motor Traffic Act”.

#### **Section 3 (definitions of “the Commissioner of Police” and “the Police Ordinance”)—**

Omit the definitions.

#### **Section 3 (definition of “the Motor Traffic Ordinance”)—**

Omit the definition, substitute the following definition:

“ ‘the Motor Traffic Act’ means the *Motor Traffic Act 1936* of the Territory;”.

## SCHEDULE—continued

**Sections 3B and 3C—**

Omit the sections.

**Subparagraph 4 (2) (a) (ii)—**

Omit the subparagraph, substitute the following subparagraph:

“(ii) which is in the City Area; or”.

**Paragraph 6 (a)—**

Omit “Minister of State for the Interior”, substitute “, the Minister”.

**Paragraphs 8A (2) (e) and 8A (3) (c)—**

Omit all the words from and including “duties” to and including “authority” (second occurring), substitute:

“duties as—

- (i) an Australian public servant;
- (ii) a Territory public servant; or
- (iii) an employee of an authority of the Commonwealth or the Territory;

or in discharging an obligation owed by that person or any other person to the Commonwealth, the Territory or such an authority”.

**Subsections 8B (1) and 8C (1)—**

Omit “of the Interior”.

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## Notes To The National Land Ordinance 1989

1. The *National Land Ordinance 1989* as shown in this reprint comprises Ordinance No. 39, 1989 amended as indicated in the Tables below.

The *National Land Ordinance 1989* is amended by the *Arts, Environment and Territories Legislation Amendment Act 1992* of the Commonwealth (No. 130, 1992). For application, savings or transitional provisions relating to the amendment see s. 5 (2) of that Act.

The *Reserved Laws (Interpretation) Ordinance 1989* of the Territory (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments. That Ordinance also affects references in ACT laws to enactments.

### Table of Ordinances

Ordinance	Number and year	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
<i>National Land Ordinance 1989</i>	39, 1989	10 May 1989	11 May 1989 (see s. 2 and Gazette 1989, No. S164)	
<i>National Land (Amendment) Ordinance 1993</i>	2, 1993	24 Nov 1993	24 Nov 1993	—
<i>National Land (Parking) (Consequential Amendments) Ordinance 1994</i>	3, 1994	2 Mar 1994	2 Sept 1994 (see s. 2)	—
<i>National Land (Amendment) Ordinance 1997</i>	1, 1997	11 June 1997	11 June 1997	—
<b>Reprinted as at 31 August 1996</b>				
<i>National Land (Amendment) Ordinance (No. 2) 1997</i>	3, 1997	19 Sept 1997	19 Sept 1997	—
<i>National Land (Amendment) Ordinance 1998</i>	1, 1998	18 Nov 1998	18 Nov 1998	S. 2 (2)

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 3.....	am. No. 1, 1998
S. 4.....	am. C'wealth Act No. 130, 1992; Ordinance No. 2, 1993; No. 3, 1994; No. 1, 1997; No. 1, 1998
S. 5A .....	ad. No. 1, 1998
Schedule .....	am. No. 3, 1997



## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **CITY AREA LEASES ORDINANCE 1936**

- as in force immediately before Self-Government day (11 May 1989); and
- as modified by the *National Land Ordinance 1989*;

and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

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**THE SCHEDULE  
ORDINANCES REPEALED BY THIS ORDINANCE**

# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## **CITY AREA LEASES ORDINANCE 1936<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
- as modified by the *National Land Ordinance 1989*;

and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

An Ordinance relating to the Leasing of Commonwealth Lands in the City Area of the Territory

### **Short title**

1. This Ordinance may be cited as the *City Area Leases Ordinance 1936*.<sup>2</sup>

### **Interpretation**

3. (1) In this Ordinance, unless the contrary intention appears—

“determined fee” means a fee determined by the Minister under section 37B for the purposes of the provision in which the expression occurs;

“lease” means—

- (a) a lease under this Ordinance; or
- (b) a lease granted under a repealed Ordinance and continued in force by subsection 2 (2) of the *City Area Leases Act 1936* of the Territory;

“lessee” means the person who is the proprietor of a lease, whether or not the person is the registered proprietor of the lease, and whether the lease was granted to him or the lease has passed to him by assignment, transfer, devolution or operation of law;

“Real Property Act” means the *Real Property Act 1925* of the Territory;

“repealed Ordinance” means an Ordinance repealed by subsection 2 (1) of the *City Area Leases Act 1936* of the Territory;

“sub-lease” means a sub-lease of a parcel of land or part of a parcel of land subject to a lease, or of a building or part of a building on a parcel of land so subject;

“sub-lessee” means the person who is the proprietor of a sub-lease whether the sub-lease was granted to him or the sub-lease has passed to him by assignment, transfer, devolution or operation of law;

“the Building Controller” has the same meaning as in the *Building Act 1972* of the Territory;

“the Secretary” means the Secretary of the Department.

(2) For the purposes of the application of a provision of this Ordinance (other than section nineteen A of this Ordinance) in which there is a reference to improvements on or to a parcel of land, there shall be deemed not to be any improvements on or to the parcel of land if the only improvements on or to the parcel of land are improvements by way of clearing, draining, grading, filling, excavating or levelling made by the Commonwealth or the cost of which the Territory or the Commonwealth has paid.

(3) A reference in this Ordinance to the proper authority shall be read as a reference to a person—

- (a) who was the proper authority under the repealed Canberra Building Regulations as in force at the relevant time;
- (b) who was the proper authority or a deputy proper authority under the repealed *Building Ordinance 1964*<sup>3</sup> as in force at the relevant time; or
- (c) who was or is, at the relevant time, the proper authority or a deputy proper authority under the repealed *Building Ordinance 1964*<sup>3</sup> in its continued application by virtue of subsection 4 (3) of the *Building Act 1972* of the Territory.

## **Application**

4. (1) This Ordinance applies only with respect to National Land that is in the City Area.

## **Power of Minister to grant leases**

5. Subject to this Ordinance, the Minister may, in the name of the Commonwealth, grant leases of land.

## **Delegation by Minister**

6. (1) Subject to this Ordinance, the Minister may delegate to any person or authority all or any of his powers and functions under this Ordinance or any regulations made under this Ordinance (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power by the Minister.

(3) Judicial notice shall be taken of—

- (a) the signature and seal of a person or authority to whom the Minister has delegated the power to grant leases; and

(b) the fact that such power has been so delegated, if such signature and seal purport to be attached, appended or affixed to a lease.

**Limitation as to lease for business purposes**

**8.** A lease granted for business purposes or for business and residential purposes may specify the particular class or classes of business for which the land included in the lease may be used.

**Use of land for industrial purposes**

**8A. (1)** This section applies to land comprised in a lease, whether granted before or after the commencement of this section, if provision is made in the lease for the land to be used—

- (a) for the purpose of “an industry”;
- (b) for the purpose of “an industry or industries”;
- (c) for the purpose of “light industrial and commercial businesses”; or
- (d) for the purpose of conducting “industries” in buildings erected on the land,

and so applies whether or not the lease provides that the use of the land for that purpose is limited or qualified in any manner or that the land may be used for any other purpose and whether or not the lease restricts the kind of industry, industries or businesses for which the land may be used.

**(2)** Subject to this section, land to which this section applies shall not be used, and the lease of the land shall not be taken to authorize the land to be used, for the sale of goods by retail.

**(3)** Subject to this section, a building erected on land to which this section applies shall not be used, and the lease of the land shall not be taken to authorize such a building to be used—

- (a) for the sale of goods by retail;
- (c) as a boarding-house, guest-house, hostel or hotel or as a building of the kind commonly known as a motel; or
- (d) as flats or as a building for the provision of residential accommodation of the kind commonly known as a flat, an apartment or a home unit.

**(4)** The use of land to which this section applies, or of a building erected on land to which this section applies, for the retail sale of—

- (a) goods (not being food-stuffs, non-alcoholic beverages or new clothing) that have been manufactured or processed on the land or in the building;
- (b) building materials, building equipment, building supplies or general hardware;
- (c) other goods ordinarily sold by sellers of goods specified in the last preceding paragraph;
- (d) agricultural, garden or farm equipment or supplies;
- (e) petrol, oil or other petroleum products;
- (f) motor vehicles, trailers, caravans, boats or machinery; or
- (g) parts or accessories for goods specified in the last preceding paragraph,

does not contravene either of the last two preceding subsections or the lease of the land.

**(4A)** The use of a building erected on land to which this section applies for the retail sale of—

- (a) food-stuffs or non-alcoholic beverages of a kind commonly known as confectionery or refreshments;
- (b) any other kind of food-stuffs or non-alcoholic beverages that have been manufactured or processed on the land or in the building; or
- (c) goods (not being food-stuffs, non-alcoholic beverages, new clothing or goods the retail sale of which does not, by virtue of the last preceding subsection, contravene subsection (2) or (3) of this section) that have been stored in bulk in the building pending their sale and distribution to persons engaged in retail trade elsewhere than on that land,

does not contravene subsection (2) or (3) of this section, or the lease of the land, if the floor area of the building does not exceed 46.50 square metres or if the goods are sold or are displayed with a view to being sold in a part only of the building, being a part having a floor area that does not exceed 46.50 square metres.

**(5)** Subsection (2) or (3) of this section, as the case may be, does not apply to land that is used for a purpose specified in subsection (2) of this section, or to a building that is used for a purpose specified in subsection (3) of this section, if the use of the land or the building for that purpose, is either expressly or by necessary implication, authorized by the lease otherwise than by reason of the fact that the lease authorizes the use of the land for a purpose specified in subsection (1) of this section.

**(6)** This section does not prevent land to which this section applies, or a building erected on any such land, from being used for a purpose for which it was being used immediately before the commencement of this section provided that the land or the building is continuously used for that purpose after the commencement of this section.

**(7)** This section shall not be taken to extend the purposes for which land to which this section applies, or a building erected on any such land, may be used.

**(8)** In this section—

“floor” includes a basement;

“floor area” means—

- (a) in relation to a building—the total area of the floors covered by roofs of the building, and in the case of a building with more than one floor, the sum of the areas of the several floors; and
- (b) in relation to a part of a building—the total area of the floors of that part of the building, and in the case of a part of a building with more than one floor, the sum of the areas of the several floors, or the parts of the several floors, included in that part of the building.

### **Interpretation**

**9.** In sections 9A to 9CD (inclusive)—

- (a) “land” means land held under a lease;
- (b) “unauthorized purpose”, in relation to land, means a purpose for which the use of the land is not authorized by or under the lease of the land; and

- (c) a reference to the use of land includes a reference to the use of part of the land.

### **Supreme Court may restrain use of land for unauthorised purpose**

**9A.** Where the lessee or sub-lessee of land uses the land, or permits the land to be used, for an unauthorized purpose, the Supreme Court may, by order, direct the lessee or sub-lessee, as the case may be, not to use the land, or permit the land to be used, for that purpose.

### **Who may apply**

**9B.** An application for an order under section 9A may be made—

- (a) by the Minister; or
- (b) by a person who is a resident of, or the lessee or sub-lessee of land or premises in, the Territory.

### **Parties to an application**

**9C. (1)** The parties to an application under section 9B are—

- (a) the applicant;
- (b) the person specified in the application as the person against whom an order under section 9A is sought; and
- (c) any person who becomes a party by virtue of section 9CB.

**(2)** A person referred to in paragraph (1) (b) or (1) (c) shall be a respondent to an application under section 9B.

### **Presumption that land used by lessee**

**9CA. (1)** Where, on an application for an order under section 9A against the lessee of land, it is proved that land has been used by a person other than the lessee, it shall be presumed that the lessee permitted the use of the land by that person unless—

- (a) the contrary is proved; or
- (b) the lessee proves that, at the time at which the land was so used, the land was the subject of a sub-lease.

**(2)** Where, on an application for an order under section 9A in relation to land that is the subject of a sub-lease, it is proved that the land has been used by a person other than the sub-lessee, it shall be presumed that the sub-lessee permitted the use of the land by that person unless the contrary is proved.

### **Lessee or sub-lessee may be joined as a party**

**9CB. (1)** Where—

- (a) an application is made for an order under section 9A against the lessee of land; and
- (b) the land is the subject of a sub-lease,

the Court may direct that the applicant give notice to the sub-lessee of the making of the application and of the time and place at which the hearing of the application will commence or be continued, as the case may be.

**(2)** Where an application is made for an order under section 9A against the sub-lessee of land, the Court may direct that the applicant give notice to the lessee of the making of the

application and of the time and place at which the hearing of the application will commence or be continued, as the case may be.

(3) Where notice is given to a person in accordance with a direction under subsection (1), that person thereupon becomes a party to the application.

### **Supreme Court may declare sub-lease void in part**

**9CC. (1)** Where—

- (a) the land to which the application under section 9B relates is the subject of a sub-lease;
- (b) the sub-lessee has used the land, or permitted the land to be used, for an unauthorized purpose;
- (c) the use of the land for that purpose is authorized by or under the sub-lease; and
- (d) the Supreme Court makes an order under section 9A against the sub-lessee,

the Court may declare the sub-lease void to the extent that it authorizes the use of the land for the purpose to which the application relates.

(2) Where the Supreme Court makes a declaration in pursuance of subsection (1) in relation to a sub-lease, the Court may make any other order that appears to the Court to be necessary to do justice between the lessee and sub-lessee.

(3) Where the Supreme Court makes a declaration in pursuance of subsection (1) in relation to a sub-lease, the sub-lease is void to the extent that it authorizes the use of the land the subject of the sub-lease for the purpose to which the application relates.

(4) The Supreme Court shall not make a declaration or order under this section unless the lessee is a party to the application.

### **Costs**

**9CD. (1)** Where—

- (a) an application is made under section 9B for an order against the lessee of land;
- (b) a sub-lessee of the land becomes a party to the application; and
- (c) an order under section 9A is made against the sub-lessee but no such order is made against the lessee,

the Court shall not make an order for the payment by the applicant of the costs of the lessee unless the Court is of the opinion that the making of the application for an order under section 9A against the lessee was unreasonable.

(2) Where—

- (a) an application is made under section 9B in relation to land held under a lease granted for residential purposes; and
- (b) an order is made under section 9A against a respondent to the application,

the Court shall not make an order for the payment by the respondent of the costs of the applicant if—

- (c) the Court is of the opinion that the making of the application was unreasonable; or



- (d) the decision of the question whether the land was used for an unauthorized purpose involved the resolution of a difficult question of law.

**Keeping two or more caravans on land prohibited**

**9D. (1)** In this section—

“caravan” includes—

- (a) a structure equipped with wheels; and
- (b) a vehicle that has been so constructed or altered that it may be used for any of the purposes of a caravan;

“exempt parcel” means a parcel of land which is the subject of an order under section 9E.

**(2)** A person shall not keep more than one caravan on a parcel of land which is not an exempt parcel and is the subject of a lease for residential purposes only.

Penalty: \$100, together with \$100 for each day during which the offence continues.

**(3)** A person shall not permit the keeping of more than one caravan on a parcel of land which is not an exempt parcel and is the subject of a lease for residential purposes only.

Penalty: \$100, together with \$100 for each day during which the offence continues.

**(4)** In proceedings for an offence against this section, evidence that money is paid to a person in connexion with the occupation by another person of a caravan on a parcel of land is evidence that the caravan is kept by the first-mentioned person on that parcel.

**Application to keep two or more caravans**

**9E. (1)** A person may apply to the Magistrates Court for an order permitting him to keep more than one caravan on a parcel of land which is the subject of a lease for residential purpose only.

**(2)** The application shall be by way of motion supported by affidavit.

**(3)** The applicant shall serve a copy of the notice and affidavit on the Minister not less than 14 days before the day specified in the notice for the hearing of the application.

**(4)** The applicant and the Minister shall be entitled to be heard on the application and to examine and cross-examine witnesses.

**(5)** The Court shall not make an order under subsection (1)—

- (a) if the use of the land for the keeping of two or more caravans is either—
  - (i) likely to constitute a nuisance or annoyance to lessees or sub-lessees of adjoining land; or
  - (ii) inappropriate, having regard to the nature of the locality; or
- (b) if either or any of the caravans is to be let or hired for occupation on the land.

**(6)** An order under subsection (1) may be made subject to such terms and conditions (if any) as the Court thinks fit to impose.

**(7)** A person who has obtained an order under subsection (1) shall not—

- (a) fail to comply with the terms of the order; or

- (b) keep, or permit the keeping of, more caravans on that parcel than is permitted by the order.

Penalty: \$100, together with \$100 for each day during which the offence continues.

(8) Where a person is convicted of an offence under subsection (7), the Court may revoke or vary the order if it thinks that the circumstances so warrant.

### **Use of residential land for professional and other purposes**

10. (1) Where in any lease the lessee covenants to use the land included in the lease for residential purposes only, the land shall not be deemed to be used for any other purpose by reason only of any person, *bona fide* resident on the land, carrying on, with and subject to the approval of the Minister, and in accordance with such conditions relating to the use of the land as the Minister specifies, his profession, trade, occupation or calling on the land.

(2) Upon application being made to the Minister and payment of the determined fee, the Minister may approve in writing of any person *bona fide* residing on any such land, carrying on his profession, trade, occupation or calling on the land for such period as the Minister specifies, and may in the instrument of approval or any subsequent instrument specify the conditions relating to the use of the land to be observed by that person in so carrying on his profession, trade, occupation or calling:

Provided that the Minister shall not approve—

- (a) of the carrying on of any offensive trade on the land;
- (b) of the doing of any act or thing in connexion with the carrying on of any profession, trade, occupation or calling on the land which may become a danger or nuisance to the tenants or occupiers of adjoining lands; or
- (c) of the carrying on of any profession, trade, occupation or calling on the land if he is satisfied that it is not in the public interest so to do.

(3) Any instrument approving of the carrying on of any profession, trade, occupation or calling on any such land, or specifying the conditions under which the profession, trade, occupation or calling may be so carried on, shall be forthwith published in the *Gazette*.

### **Variation of provision, covenant or condition of a lease**

11A. (1) Notwithstanding anything contained in this Ordinance, the Supreme Court of the Australian Capital Territory may, subject to this section, on the application of the lessee (in this section referred to as the “application for variation”), vary any provision, covenant or condition of a lease in relation to the purpose for which the land subject to the lease may be used.

(2) No such variation shall be made—

- (a) unless the Court is satisfied that there are such circumstances existing as in the opinion of the Court make it desirable to vary the provision, covenant or condition in order that the reasonable user of the land should not be impeded; or
- (b) if, not later than seven days before the day for hearing named in the notice of motion filed by the applicant in pursuance of this section, a certificate is filed by the Minister with the Registrar of the Court stating that, in his opinion, the variation sought would be inconsistent with the National Capital Plan, the Territory Plan or an NCDC policy, within the meaning of Part III, Part IV and Part X, respectively, of the *Australian Capital Territory (Planning and land Management) Act 1988*.

(3) An application for variation shall be made by motion supported by affidavit.

(4) The applicant shall file with the Registrar of the Court a notice of motion together with the affidavit in support and shall, at least thirty days before the day named in the notice for hearing the motion—

- (a) serve a copy of the notice and affidavit on the Minister; and
- (b) publish the notice in the *Gazette* and a newspaper circulating in the Territory.

(5) The Minister and also the applicant for variation shall be entitled, either personally or by counsel or solicitor, to be heard on the application for variation and to examine and cross-examine witnesses.

(6) Any person who, within twenty-one days after the publication of the notice of motion in the *Gazette*—

- (a) files with the Registrar of the Court notice of his intention to oppose the application for variation stating the grounds of his opposition; and
- (b) serves on the applicant for variation a copy of such notice of intention,

shall, with the leave of the Court, be entitled, either personally or by his counsel or solicitor, to be heard in opposition to the application for variation and to examine and cross-examine witnesses.

(7) The applicant for variation shall pay his own costs and, if the Court so orders, the full costs of any other person appearing in pursuance of this section.

(8) An order of the Supreme Court under this section varying a provision, covenant or condition in a lease shall, in the first instance, be provisional only and is subject to—

- (a) the condition (to be included in the provisional order) that if, in accordance with subsection (9B) of this section, a premium is payable to the Commonwealth in respect of the variation, the premium will be paid to the Commonwealth by the lessee within the prescribed time; and
- (b) such conditions, whether as to compensation to other persons or otherwise, as the Court thinks just and are included in the provisional order.

(9) The Minister shall, as soon as practicable after a provisional order has been made, determine—

- (a) the capital sum that the lease might be expected to have realised assuming—
  - (i) that the lease had been offered for sale at a bona fide sale on the day immediately before the day on which the provisional order was made on such reasonable terms and conditions as a *bona fide* seller would require; and
  - (ii) that, during the remainder of the term of the lease, there would be no variation, whether under this lease or otherwise, of any of the provisions, covenants or conditions in the lease; and
- (b) the capital sum that the lease might be expected to have realised assuming—
  - (i) that the lease had been offered for sale at a bona fide sale on the day on which the provisional order was made on such reasonable terms and conditions as a *bona fide* seller would require; and
  - (ii) that the variation specified in the provisional order had been made,

and cause notice the determination of those capital sums to be given to the lessee.

**(9A)** For the purposes of the next two succeeding subsections, the prescribed formula is—

$$\frac{\mathbf{A}-\mathbf{B}}{2},$$

where—

**A** is an amount equal to the capital sum determined in accordance with paragraph (b) of subsection (9) of this section; and

**B** is an amount equal to the capital sum determined in accordance with paragraph (a) of that subsection.

**(9B)** If the amount ascertained in accordance with the prescribed formula exceeds One thousand five hundred dollars, a premium is payable to the Commonwealth in respect of the variation specified in the provisional order and the amount of the premium is an amount equal to the amount of the excess.

**(9C)** If—

- (a) the amount represented by the letter “**A**” in the prescribed formula is less than the amount represented by the letter “**B**” in that formula; or
- (b) the amount ascertained in accordance with the prescribed formula does not exceed One thousand five hundred dollars,

a premium is not payable in respect of the variation specified in the provisional order.

**(9D)** The prescribed time for the purposes of paragraph (a) of subsection (8) of this section is two months after the date on which the lessee is notified by the Minister of the capital sums determined in accordance with subsection (9) of this section.

**(9E)** A notice under subsection (9) shall include—

- (a) a statement of the terms of section 11B; and
- (b) a statement setting out the amount of the premium payable to the Commonwealth in accordance with subsection (9B) or a statement that a premium is not payable in accordance with that subsection, as the case requires.

**(9EA)** The validity of a determination made by the Minister under subsection (9) shall not be taken to be affected by a failure to comply with paragraph (9E) (a).

**(9EB)** Where a notice of a determination by the Minister is given to a lessee under subsection (9), the lessee may, within 28 days after receiving the notice, by notice in writing given to the Minister, request the Minister to furnish to the lessee a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the determination, and the Minister shall, as soon as practicable, but in any case within 28 days after receiving the request, prepare, and furnish to the lessee, such a statement.

**(9F)** A provisional order under this section shall be made a final order by the Court if the Court is, on an application by the lessee for a final order, satisfied that the lessee has complied with the conditions specified in the provisional order.

**(9G)** Upon registration by the Registrar of Titles of a final order under this section, the lease of the parcel of land to which the order relates shall be deemed to have been varied in the manner specified in the final order.

(10) Notice of the filing of any certificate referred to in paragraph (b) of subsection (2) of this section shall be published in the *Gazette* and shall, not later than seven days before the application for variation is to be made to the Court, be given to the applicant and to every person who has filed notice of his intention to oppose the application.

(11) For the purposes of this section, service of any document on the Minister shall be effected by sending the document by post addressed to the Secretary of the Department, Canberra or by leaving the document with the Secretary.

### **Appeal to Administrative Appeals Tribunal**

**11B. (1)** Application may be made to the Administrative Appeals Tribunal by a lessee who has paid the premium payable in respect of a variation under section 11A for a review of the determination made by the Minister under subsection 11A (9).

(2) Notwithstanding the provisions of section 29 of the *Administrative Appeals Tribunal Act 1975*, an application under subsection (1) shall be made within 30 days after the payment of the premium by the lessee or within such further period as the Administrative Appeals Tribunal allows, whether before or after the expiration of the period of 30 days.

### **Adjustment of premium on variation of determination on review**

**11C. (1)** Where, as a result of a review under subsection 11B, a variation is made to the determination made under subsection 11A(9), a re-calculation in accordance with subsections 11A (9A), (9B) and (9C) shall be made, and—

- (a) if, by reason of the re-calculation, the amount of the premium is reduced or a premium is not payable, the lessee is entitled to be paid an amount equal to the amount by which the premium is reduced or an amount equal to the amount of the premium paid, as the case requires; or
- (b) if, by reason of the re-calculation, the amount of the premium is increased or a premium becomes payable, the Commonwealth may recover from the lessee as a debt due and payable by him to the Commonwealth an amount equal to the amount by which the premium is increased or an amount equal to the amount of the premium that is payable, as the case requires.

(2) In this section, “the lessee” means the person who is the lessee on the date on which the Administrative Appeals Tribunal gives its decision on a review under section 11B.

### **Term, covenants and conditions of leases the right to which becomes vested before 1 January 1971**

**12. (1)** A lease shall be—

- (a) for such period not exceeding 99 years; and
- (b) subject to such covenants and conditions as to rent and otherwise,

as the Minister determines or as are prescribed.

(2) On and after the first day of January, One thousand nine hundred and seventy-one—

- (a) this section applies only to and in relation to a lease granted before that date or granted after that date by reason that the right to the grant was obtained before that date; and
- (b) the covenants and conditions to which such a lease is subject are the covenants and conditions contained in the lease as modified by section eighteen of this Ordinance.

### **Terms etc. of leases the right to the grant of which is obtained after 1 January 1971**

**12A. (1)** This section applies to a lease granted after the first day of January, One thousand nine hundred and seventy-one, not being a lease the right to the grant of which was obtained before that date.

**(2)** The term to be included in a lease to which this section applies is the period of years, not exceeding ninety-nine years, determined by the Minister, before offering, whether by auction or otherwise, the right to the grant of the lease, as the term to be included in the lease.

**(3)** The provisions, covenants and conditions as to rent and otherwise to be included in a lease to which this section applies are such provisions, covenants and conditions, not inconsistent with this Ordinance, as are determined by the Minister, before offering, whether by auction or otherwise, the right to the grant of the lease, as the provisions, covenants and conditions to be included in the lease.

**(4)** Where part of the reserve price for a lease to which this section applies is not paid by the person entitled to the right to the grant of the lease before the grant of the lease, there shall be included in the lease—

- (a)** an acknowledgment by that person that he has agreed to pay an amount equal to the difference between the amount paid by him and the reserve price and interest on the amount payable by him at a specified rate by specified equal monthly instalments over a specified period; and
- (b)** a mutual covenant that, if any of those instalments shall remain unpaid for a period of twelve months next after the date on which the instalment becomes payable, the Commonwealth may determine the lease.

### **Auctioning of leases**

**13. (1)** In this section, “the successful bidder”, in relation to the sale by auction of the right to the grant of a lease of a parcel of land, means the person who, at the auction, bids the highest amount for the right to the grant of the lease.

**(2)** Subject to this section, the Minister may offer for sale by auction rights to the grant of leases under this Ordinance of parcels of unleased land.

**(3)** The Minister may, by order under his hand, direct that the right to bid at a specified auction for the rights to the grant of leases of specified parcels of land shall be restricted to persons included in a specified class of persons.

**(3A)** In an order under the last preceding subsection, the Minister may direct that a person included in the specified class of persons shall not be entitled to obtain, at the auction specified in the order, the right to the grant of a lease of more than one of the parcels of land specified in the order.

**(4)** The Minister may, by order under his hand, direct that a person shall not be entitled to obtain, at a specified auction, the rights to the grant of leases of more than a specified number of specified parcels of land.

**(5)** The Minister shall cause notice of the holding of an auction to be published in the *Gazette* at least fourteen days before the date of the auction and shall cause to be included in the notice a statement specifying the place at which copies may be obtained of plans showing the location of the parcels of land the rights to the grant of leases of which are to be offered for sale at the auction and of documents containing statements with respect to—

- (a)** the distinguishing number allotted to each of the parcels of land;

- (b) whether or not there are improvements on any of the parcels of land and, if so, a description of the improvements, the value of the improvements and whether or not the Commonwealth, is prepared to accept a mortgage securing the payment of an amount not exceeding the whole or a specified part of the value of the improvements;
- (d) the term to be included in each of the leases of the parcels of land; and
- (e) the provisions, covenants and conditions to be included in each of the leases of the parcels of land.

**(5A)** Where the Minister has made an order under subsection (3) of this section in relation to an auction, the Minister shall cause to be included in the notice referred to in the last preceding subsection a statement specifying—

- (a) the parcels of land to which the order applies;
- (b) the class of persons specified in the order;
- (c) that the right to bid at the auction for the rights to the grant of leases of those parcels of land is restricted to persons included in that class of persons; and
- (d) where the order includes a direction under subsection (3A)— particulars of the direction.

**(5B)** Where the Minister has made an order under subsection (4) of this section in relation to an auction, the Minister shall cause to be included in the notice referred to in subsection (5) of this section particulars of the order.

**(6)** At an auction in relation to which the Minister has made an order under subsection (3) of this section that includes a direction as provided for by subsection (3A) of this section—

- (a) a person who becomes the successful bidder for the right to the grant of a lease of one parcel of land specified in the order ceases to be eligible to make further bids at the auction;
- (b) a bid for the right to the grant of a lease of a parcel of land specified in the order made by a person other than a person included in the class of persons specified in the order is not an effective bid; and
- (c) a bid for the right to the grant of a lease of a parcel of land specified in the order made by a person included in that class of persons who has ceased to be eligible to make further bids at the auction is not an effective bid.

**(7)** At an auction in relation to which the Minister has made an order under subsection (4) of this section—

- (a) a person who becomes the successful bidder for the rights to the grant of leases to the number, specified in the order, of the parcels of land specified in the order ceases to be eligible to make further bids at the auction; and
- (b) a bid made by a person who has ceased to be eligible to make further bids at the auction is not an effective bid.

**(8)** Bidding at an auction for the right to the grant of a lease of a parcel of land shall, whether or not there are improvements on the parcel of land, commence at an amount that is not less than the reserve price for the lease, and a bid of an amount that is less than that reserve price is not an effective bid.

**(10)** Subject to this section, the successful bidder for the right to the grant of a lease of a parcel of land shall pay to the Commonwealth, at the time of the auction, an amount equal to the amount of the bid that made him the successful bidder.

**(13)** Subject to subsection (13A), the successful bidder for the right to the grant of a lease of a parcel of land on which there are improvements shall pay to the Commonwealth, at the time of the auction—

- (a) an amount equal to the amount of the bid that made him the successful bidder; or
- (b) an amount that is not less than the difference between the amount of the bid that made him the successful bidder and the maximum amount notified in the documents referred to in subsection (5) of this section relating to the auction as the amount that may be secured by mortgage,

and, if the successful bidder elects to pay an amount ascertained in accordance with paragraph (b) of this subsection, he shall, at the time of the auction, sign an agreement that he will—

- (c) pay to the Commonwealth, within twenty-eight days after the auction or within such further time as the Minister allows, an amount equal to the unpaid balance of the amount of the bid that made him the successful bidder; or
- (d) if the documents referred to in subsection (5) of this section relating to the auction notified that the Commonwealth, was prepared to accept a mortgage securing the payment of any balance, execute such a mortgage on or before the grant of the lease.

**(13A)** Where the Minister, by instrument in writing, declares that specified parcels of land the rights to the grant of the leases of which are to be offered for sale at a specified auction are parcels of land to which this subsection applies, the successful bidder for the right to the grant of the lease of such a parcel may, at the time of the auction, pay to the Commonwealth, instead of an amount equal to the amount of his bid, an amount equal to that part of the amount of his bid that is specified by the Minister in the instrument in respect of the right to the grant of the lease of that parcel of land.

**(13B)** A declaration under subsection (13A) shall not be made in respect of a parcel of land on which there are improvements, and over which the Commonwealth is prepared to accept a mortgage.

**(13C)** Where the successful bidder for the right to the grant of a lease of a parcel of land pays to the Commonwealth at the time of an auction, in accordance with subsection (13A), an amount that is equal to a part of the amount of his bid, he shall, within the period after the date of the auction, being a period of not less than 14 days, that is specified by the Minister in the instrument referred to in subsection (13A) in respect of the right to the grant of that lease, or within such further time (if any) as the Minister, whether before or after the expiration of that period, allows, pay to the Commonwealth an amount equal to the difference between the amount paid by him at the time of the auction and the amount of his bid.

**(13D)** Where the Minister makes a declaration in pursuance of subsection (13A), he shall cause the notice referred to in subsection (5) that relates to the same auction as the declaration—

- (a) to give notice of the making of the declaration by the Minister; and
- (b) to specify—
  - (i) the parcels of land in respect of which the declaration has been made; and



- (ii) in respect of the right to the grant of the lease of each parcel—the part of the amount of the bid by the successful bidder that may be paid to the Commonwealth at the time of the auction and the period after the date of the auction, being the period specified by the Minister in the instrument referred to in subsection (13A), within which, where that part is so paid, the amount equal to the difference between the amount paid and the amount of the bid will be required to be paid.

(13E) Where the successful bidder for the right to the grant of a lease of a parcel of land fails to pay to the Commonwealth, in respect of that right, an amount of money in accordance with the requirements of subsection (13C), that person shall not be entitled to recover any moneys paid to the Commonwealth in pursuance of subsection (13A) in respect of the right to the grant of that lease.

(14) Where, after compliance with such of the preceding provisions of this section as are applicable to the successful bidder for the right to the grant of a lease of a parcel of land, the lease for the term and containing the provisions, covenants and conditions that are, by reason of section twelve A of this Ordinance, applicable is tendered to the successful bidder, the successful bidder shall accept, sign and seal the lease.

#### **Power of Minister to invite applications for leases**

14. (1) In this section, “the successful applicant”, in relation to applications invited for the right to the grant of a lease of a parcel of land, means the person who offers the highest amount for the right to the grant of the lease or, in the circumstances referred to in subsection (4) of this section, the person determined in accordance with that subsection to be the successful applicant.

(2) The Minister may, by notice in the *Gazette*, invite applications for the right to the grant of a lease of a specified parcel of land and may, in the notice, direct—

- (a) that the right to make application for the right to the grant of the lease is not restricted; or
- (b) that the right to make application for the right to the grant of the lease is restricted to persons included in a specified class of persons.

(3) The Minister shall include in a notice referred to in the last preceding subsection a statement specifying the place at which copies may be obtained of documents containing statements with respect to—

- (a) the location and description of the parcel of land;
- (b) whether or not there are improvements on the parcel of land and, if so, a description of the improvements, the value of the improvements and whether or not the Commonwealth is prepared to accept a mortgage securing the payment of an amount not exceeding the whole or a specified part of the value of the improvements;
- (d) the term to be included in the lease of the parcel of land;
- (e) the provisions, covenants and conditions to be included in the lease of the parcel of land; and
- (f) the conditions to be complied with by applicants including conditions relating to the manner in which, and the time within which, applications are to be made and to the deposit (if any) to be lodged with each application.

**(3A)** Where the Minister has, in the notice inviting applications for the right to the grant of a lease of a parcel of land, directed, in pursuance of paragraph (b) of subsection (2) of this section, that the right to make application for the right to the grant of the lease is restricted to persons included in a specified class of persons, the Minister may include in the notice a statement that persons included in that class of persons may offer for the right to the grant of the lease an amount that is not less than one-quarter of the reserve price for the lease, and, in such a case, the Minister shall include in the notice a statement specifying the provisions to be included in an agreement to be entered into by the successful applicant for the right to the grant of the lease for the payment by him of any part of the reserve price for the lease that is not paid before the grant of the lease.

**(3B)** An application shall not be accepted as an application under this section for the right to the grant of a lease of a parcel of land unless the amount offered—

- (a) is not less than the reserve price for the lease; or
- (b) where the Minister has included in the notice inviting applications for the right to the grant of the lease a statement that persons included in the specified class of persons may offer for the right to the grant of the lease an amount that is not less than one-quarter of the reserve price for the lease—is not less than one-quarter of the reserve price for the lease.

**(4)** If—

- (a) two or more applicants offer the same amount for the right to the grant of a lease of a parcel of land;
- (b) the amount so offered is the highest amount offered for the right to the grant of a lease of the parcel of land; and
- (c) the applicants are otherwise equally eligible as lessees,

the Minister may determine by ballot, or otherwise, which of the applicants is the successful applicant.

**(5)** Where applications are invited for the right to the grant of a lease of a parcel of land, the successful applicant is, subject to this Ordinance and to the approval of the Minister, entitled to the grant of a lease of the parcel of land.

**(6)** Subject to the next succeeding subsection and to subsection (9) of this section, the successful applicant for the right to the grant of a lease of a parcel of land shall, within twenty-eight days after the date on which he is notified in writing that he is the successful applicant or within such further time as the Minister allows, pay to the Commonwealth an amount equal to the amount offered by him in his application for the right.

**(7)** Where, in a case where the Minister has given a direction in pursuance of paragraph (b) of subsection (2) of this section, the amount offered by the successful applicant for the right to the grant of a lease of a parcel of land is less than the reserve price for the lease, the successful applicant shall, within twenty-eight days after the date on which he is notified in writing that he is the successful applicant or within such further time as the Minister allows—

- (a) pay to the Commonwealth an amount equal to the reserve price for the lease; or
- (b) pay to the Commonwealth an amount that is not less than the amount offered by him in his application for the right to the grant of the lease and sign an agreement that he will pay an amount equal to the difference between the amount paid by him and the reserve price for the lease and interest on the amount payable by him at a specified rate by specified equal monthly instalments over a specified period.

(8) The instalments to be specified in an agreement referred to in paragraph (b) of the last preceding subsection shall be such that the total amount payable by way of instalments in any period of twelve months shall not be less than Fifty dollars and the period to be so specified shall not exceed thirty-one years.

(9) The successful applicant for the right to the grant of a lease of a parcel of land on which there are improvements shall, within twenty-eight days after the date on which he is notified in writing that he is the successful applicant or within such further time as the Minister allows—

- (a) pay to the Commonwealth an amount equal to the amount of the offer that made him the successful applicant; or
- (b) pay to the Commonwealth an amount that is not less than the difference between the amount of the offer that made him the successful applicant and the maximum amount notified in the documents referred to in subsection (3) of this section as the amount that may be secured by mortgage,

and, if the successful applicant elects to pay an amount ascertained in accordance with paragraph (b) of this subsection, he shall, within that period or extended period, sign an agreement that he will, on or before the grant of the lease—

- (c) pay to the Commonwealth an amount equal to the unpaid balance of the amount of the offer that made him the successful applicant; or
- (d) if the documents referred to in subsection (3) of this section notified that the Commonwealth was prepared to accept a mortgage securing the payment of any balance, execute such a mortgage.

(10) Where, after compliance with such of the preceding provisions of this section as are applicable to the successful applicant for the right to the grant of a lease of a parcel of land, the lease for the term and containing the provisions, covenants and conditions that are, by reason of section twelve A of this Ordinance, applicable is tendered to the successful applicant, the successful applicant shall accept, sign and seal the lease.

(11) An amount lodged by way of deposit with an application made under this section for the right to the grant of a lease of a parcel of land by a person who does not become the successful applicant for the right to the grant of a lease of the parcel of land shall be refunded to him.

(12) Subject to subsection (13), an amount lodged by way of deposit with an application made under this section for the right to the grant of a lease of a parcel of land by a person who becomes the successful applicant for the right to the grant of a lease of the parcel of land shall be deemed to be payment by that person on account of the amount payable by him under this section.

(13) Where a person who becomes the successful applicant for the right to the grant of a lease fails to comply with subsection (6), (7) or (9), an amount lodged by way of deposit with the application made by that person under this section is, by force of this subsection, forfeit to the Commonwealth.

#### **Power of Minister to grant lease where no bid or application is made**

15. If—

- (a) a bid is not received for the right to the grant of a lease of a parcel of land offered for sale by auction;

- (b) an application is not received for the right to the grant of a lease of a parcel of land for which applications have been invited by the Minister; or
- (c) for any other reason a person does not become entitled to the grant of such a lease or such a lease is not granted,

the Minister may, at any subsequent time, grant a lease under this Ordinance of the parcel of land.

**Power to lease without auction or inviting applications**

**17. (1)** The Minister may, grant a lease of any unleased land under this Ordinance notwithstanding that the right to the lease has not been offered by auction and that applications for the lease have not been invited under section fourteen of this Ordinance.

**(2)** Application may be made to the Minister for the grant of a lease under this section.

**(3)** An application under subsection (2)—

- (a) shall specify the purpose for which the land is required;
- (b) may specify the desired size and location of the land; and
- (c) shall be accompanied by the determined fee.

**(4)** Where a lease is not granted to the applicant within 6 months of the date on which the application is made, there is payable to the applicant, on application by him or her, an amount equal to the determined fee paid by the applicant.

**Leases by ballot**

**17A. (1)** The Minister may, by notice in the *Gazette*, declare that specified parcels of land, being parcels of land on which there are no improvements, are parcels of land the right to the grant of a lease of which shall be determined by ballot.

**(2)** The Minister shall, in the notice referred to in the last preceding subsection, specify—

- (a) the persons who are eligible to make application for inclusion in the ballot;
- (b) the manner and form in which such an application may be made;
- (c) the time within which such an application is to be made;
- (d) the conditions subject to which persons who have made such an application may be admitted to the ballot or excluded from the ballot;
- (e) the date on which the ballot is to be held;
- (f) the manner in which, and the persons in whose presence, the ballot is to be conducted;
- (g) a short description of each of the parcels of land the right to a lease of which is to be determined by the ballot;
- (h) the reserve price for each of the leases of the parcels of land;
- (i) the term to be included in each of the leases of the parcels of land; and
- (j) the provisions, covenants and conditions to be included in each of the leases of the parcels of land including those relating to the payment of any part of the reserve price for the lease that is not paid before the grant of the lease.

(3) A person who becomes, by reason of the conduct of a ballot, entitled to the right to the grant of a lease of a parcel of land shall, within twenty-eight days after he is notified in writing that he has become so entitled or within such further time as the Minister allows—

- (a) pay to the Commonwealth an amount equal to the reserve price for the lease; or
- (b) pay to the Commonwealth an amount that is not less than one-quarter of the reserve price for the lease and sign an agreement that he will pay an amount equal to the difference between the amount paid by him and the reserve price for the lease and interest on the amount payable by him at a specified rate by specified equal monthly instalments over a specified period.

(3A) The instalments to be specified in an agreement referred to in paragraph (b) of the last preceding subsection shall be such that the total amount payable by way of instalments in any period of twelve months shall not be less than Fifty dollars and the period to be so specified shall not exceed thirty-one years.

(4) Where a person who becomes, by reason of the conduct of the ballot, entitled to the right to the grant of a lease of a parcel of land—

- (a) does not, within the time fixed by, or allowed under, the last preceding subsection, pay the amounts referred to in that section; or
- (b) does not, within three months after the date on which the ballot is conducted, accept in writing a lease of the parcel of land,

the person ceases to be entitled to the right to the grant of a lease of the parcel of land.

(5) The right to the grant of a lease of a parcel of land to which a person becomes entitled under this section is not capable of being assigned or charged or passed by operation of law to any other person.

(6) A lease granted to a person who becomes, by reason of the conduct of a ballot under this section entitled to the right to a lease of a parcel of land shall contain a provision that the land included in the lease shall only be used for residential purposes.

(7) Nothing in this section affects the power of the Minister to grant under, or in accordance with, any of the preceding provisions of this Ordinance, a lease of a parcel of land which is specified in a notice under subsection (1) of this section.

### **Minister's power to grant leases under special arrangements**

**17AA.** (1) This section applies to land that the Minister, by notice published in the *Gazette*, determines should, in the public interest, be dealt with under this section.

(2) The Minister may, on behalf of the Commonwealth—

- (a) enter into a contract for the grant of a lease of land to which this section applies; and
- (b) grant such a lease for such period, not exceeding 99 years, as the Minister determines.

(3) In exercising the powers given by subsection (2), the Minister—

- (a) is not obliged to comply with any of the requirements of sections 12A, 13, 14 and 17; and
- (b) may proceed by way of auction, tender or direct negotiation, as the Minister thinks fit.

### Staged development leases

**17B. (1)** The Minister may, by notice in the *Gazette*, determine that specified parcels of land are parcels of land to be developed in successive stages in accordance with this section and may, in the notice—

- (a) offer for sale by auction; or
- (b) invite applications for,

the right to the grant of leases of those parcels of land.

**(2)** The Minister shall include in the notice referred to in the last preceding subsection a statement specifying the place at which copies may be obtained of plans showing the location of the parcels of land and of documents containing statements with respect to—

- (a) the distinguishing number allotted to each of the parcels of land;
- (b) the reserve price for each of the leases of the parcels of land;
- (c) the sequence in which leases of the parcels of land are to be granted;
- (d) the term to be included in each of the leases of the parcels of land and the date on which each of those terms is to commence;
- (e) the provisions, covenants and conditions to be included in each of the leases of the parcels of land; and
- (f) the provisions, covenants and conditions to be included in an agreement to be entered into with the Commonwealth by the person who becomes entitled to the right to the grant of leases of the parcels of land providing—
  - (i) for the development of the parcel of land the lease of which is to be granted first and for the development in specified successive stages of the other parcels of land;
  - (ii) on completion of each stage of the development referred to in the last preceding subparagraph in accordance with the provisions, covenants and conditions applicable in relation to that stage of development, for the termination of the then subsisting lease and for the grant of a lease of the developed parcel of land or developed parcels of land and of the parcel of land next to be developed;
  - (iii) on completion of all stages of the development referred to in subparagraph (i) of this paragraph in accordance with the provisions, covenants and conditions applicable in relation to each of those stages of development, respectively, for the termination of the then subsisting lease and for the grant of one lease of all those parcels of land, being a lease for a specified term commencing on that termination and containing specified provisions, covenants and conditions; and
  - (iv) for the payment by that person, at such respective times as are specified, of the reserve price for each of the leases of the parcels of land other than for the lease which is to be granted first.

**(3)** Bidding at an auction under this section shall commence at an amount that is not less than the reserve price for the lease which is to be granted first, and a bid of an amount that is less than that reserve price is not an effective bid.

(4) An application shall not be accepted as an application under this section for the right to the grant of leases of the parcels of land unless the amount offered is not less than the reserve price for the lease which is to be granted first.

(5) The person who bids at an auction, or offers by application, the highest amount for the right to the grant of the leases of the parcels of land is, in the succeeding provisions of this section, referred to as “the successful bidder”.

(6) The successful bidder shall, if he became the successful bidder by auction, pay at the time of the auction or, if he became the successful bidder by application, pay within seven days after being notified in writing that he is the successful bidder to the Commonwealth an amount equal to the amount of the bid or offer that made him the successful bidder.

(7) The successful bidder for the right to the grant of the leases of the parcels of land, upon—

- (a) payment, in accordance with the last preceding subsection, of an amount equal to the amount of the bid or offer that made him the successful bidder; and
- (b) executing an agreement containing the provisions, covenants and conditions referred to in paragraph (f) of subsection (2) of this section,

becomes entitled to the grant of the lease which is to be granted first and, subject to this Ordinance and to compliance by him with the provisions, covenants and conditions contained in the agreement, becomes entitled to the grant, at the respective times specified in the agreement, of the successive leases as provided for by the agreement.

## **Rent**

**18. (1)** In this section, the prescribed date is the first day of January, One thousand nine hundred and seventy-one.

(2) The rent payable, on and after the prescribed date, under a lease granted before the date of commencement of the *City Area Leases Act 1974* of the Territory is Five cents per annum to be paid if and when demanded by the Minister.

(3) On and after the prescribed date—

- (a) a provision in a lease granted before the prescribed date reserving the rent payable under the lease;
- (b) a covenant in such a lease by the lessee to pay rent or to pay additional rent under the lease; and
- (c) a covenant in such a lease by the lessee or the Commonwealth or any mutual covenant in such a lease by the lessee and the Commonwealth providing for the determination of the lease in the event of the rent payable under the lease remaining unpaid for any period,

cease, subject to subsection (5) of this section, to have any force or effect.

(4) On and after the prescribed date, a provision or a covenant in a lease granted before the prescribed date whereby any amount payable under the lease shall be deemed to be rent payable under the lease shall, subject to the next succeeding subsection, cease to have any force or effect and any amount which, but for this subsection, would have been deemed to be rent payable under the lease is recoverable as a debt due and payable to the Commonwealth by the lessee.

(5) Nothing in the last two preceding subsections prevents the enforcement of a provision or a covenant in a lease granted before the prescribed date, being a provision or covenant referred to in either of those subsections, in respect of rent, amounts deemed to be rent, or additional rent, that had become payable before the prescribed date.

### **Notice of variation**

**18A. (1)** Where the rent payable under a lease is varied in accordance with a term of the lease, the Minister shall cause notice in writing setting out particulars of the variation to be given to the lessee within fourteen days after the date of the variation.

(2) Notice for the purpose of subsection (1) may be given by post.

### **Review of variations of rent**

**18B. (1)** Where—

- (a) the rent payable under a lease is varied in accordance with a term of the lease; and
- (b) the lease does not include a provision for the submission to arbitration of differences between the parties to the lease regarding variation of the rent payable under the lease,

the lessee may, within 30 days after he receives notification of the variation or within such further period as the Minister allows, post to or lodge with the Secretary a request in writing that the Minister review the variation.

(2) The making of a request under subsection (1) does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.

(3) Where a request is made under subsection (1), the Minister shall review the variation to which the request relates and may confirm that variation or set aside that variation and substitute such other variation as the Minister thinks fit.

(4) The Minister shall cause notice in writing of a decision refusing to allow an extension of the period under subsection (1) or a decision on a review under subsection (3) to be given to the lessee.

(5) A notice under subsection (4) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, the lessee is entitled to apply to the Administrative Appeals Tribunal for a review of the decision to which the notice relates.

(6) The validity of a decision of the Minister referred to in subsection (4) shall not be taken to be affected by a failure to comply with subsection (5).

(7) The lessee may apply to the Administrative Appeals Tribunal for a review of a decision of the Minister—

- (a) refusing to allow an extension of the period under subsection (1); or
- (b) on a review by the Minister under subsection (3).

### **Payment for improvements**

**19. (1)** In this section, a reference to the amount payable in respect of the improvements on a parcel of land is a reference to—

- (a) where the Minister has, in a notice under section thirteen of this Ordinance offering for sale by auction a parcel of land on which there are improvements or a notice under section fourteen of this Ordinance inviting applications for the grant of a parcel



of land on which there are improvements, specified an amount as the value of the improvements—the amount so specified by the Minister;

- (b) where the Minister has not, in such a notice under either of those sections, specified an amount as the value of the improvements— the amount bid, or offered, as the case may be, for the right to the grant of the lease of the parcel of land less the amount paid under paragraph (a) of subsection (14) of section thirteen of this Ordinance or under paragraph (a) of subsection (8) of section fourteen of this Ordinance, as the case may be; and
- (c) where a lease of a parcel of land on which there are improvements is to be granted under section fifteen or seventeen of this Ordinance—the amount determined by the Minister as the value of the improvements.

(2) A person who has become entitled to the grant of a lease of a parcel of land on which there are improvements, may—

- (a) on or before the date of the grant of the lease, pay the amount payable in respect of the improvements on the parcel of land;
- (b) subject to such terms and conditions as the Minister thinks fit, agree to pay the amount payable in respect of the improvements on the parcel of land (together with such interest on that amount as is fixed by the Minister) by such instalments as the Minister determines; or
- (c) on or before the date of the grant of the lease, pay part of the amount payable in respect of the improvements on the parcel of land and execute in favour of the Commonwealth a mortgage of the land included in the lease, in such form as the Minister thinks fit, to secure the payment of the balance of the amount so payable and such interest as is provided for in the mortgage.

(5) A mortgage executed in pursuance of this section may contain such covenants as the Minister thinks fit.

(6) The Minister may, in the name of the Commonwealth, take any such mortgage, and may, in relation to any mortgage so taken, do, for or on behalf of the Commonwealth, any or all of the acts or things which the Commonwealth as mortgagee is empowered, permitted or required to do.

(6A) Where—

- (a) a mortgage executed in pursuance of this section (whether before or after the commencement of this subsection) makes provision for the acceptance of an instalment without further interest if the instalment is paid on or before the due date for its payment; and
- (b) an instalment was, before that commencement, or is, after that commencement, paid after the due date for its payment,

the Minister may, if in his opinion it is desirable to do so, waive on behalf of the Commonwealth payment of the whole or part of the further interest that would, but for the waiver, be payable under the mortgage in respect of that instalment.

(7) Where, prior to the commencement of this Ordinance, the Minister or any other authority or person has purported to take a mortgage of land included in any lease to secure to the Commonwealth or any authority under the Commonwealth the payment of any part of the amount payable for the improvements on the land, that mortgage shall be deemed to be and at all times to have been as valid and effectual for all purposes as if this Ordinance had been in

force when the Minister, authority or person purported to take it, and as if it had been taken by the Minister in pursuance of this section.

(8) On and after the first day of January, One thousand nine hundred and seventy-one, this section applies only to and in relation to a lease to the right to the grant of which a person became entitled before that date, and the references to specified provisions in subsection (1) of this section in its application to and in relation to such a lease shall be read as references to those provisions of the *City Area Leases Act 1936* of the Territory, as in force immediately before 1 January 1971.

### **Security for balance of money payable where lease includes improvements**

**19AA. (1)** This section applies to and in relation to the grant of a lease of a parcel of land the right to which a person has become entitled on or after the first day of January, One thousand nine hundred and seventy-one, being a parcel of land on which there are improvements.

(2) Where a person who is entitled to the right to the grant of a lease of a parcel of land to which this section applies has not paid the whole of the amount payable by him in respect of the grant of the lease and has signed an agreement that he will execute a mortgage securing the payment of an amount equal to the unpaid balance of that first-mentioned amount, that person shall, on or before the grant of the lease, execute in favour of the Commonwealth a mortgage of his estate in the parcel of land securing the payment of an amount equal to that balance and interest on that last-mentioned amount.

(3) Where—

- (a) a mortgage executed in pursuance of this section makes provision for the acceptance of an instalment without further interest if the instalment is paid on or before the due date for its payment; and
- (b) an instalment is paid after the due date for its payment,

the Minister may waive on behalf of the Commonwealth payment of the whole or part of the further interest that would, but for the waiver, be payable under the mortgage in respect of that instalment.

### **Tenant right in improvements**

**19A. (1)** Where, upon the expiration of the term of the lease of land upon which there are improvements, the lessee is granted a further lease of that land, or is granted a lease of any part of that land, he shall not be liable to make any payment to the Commonwealth for the improvements on that land or part.

(2) Where, upon the expiration of the term of a lease of land upon which there are improvements, the lessee is not granted a further lease of the land or is granted a lease of part only of the land, the Commonwealth shall—

- (a) in respect of the land or any part of the land not leased to the lessee, where the land or part has not, prior to the expiration of the term of the lease, been declared by the Minister to be available for lease—forthwith;
- (b) in respect of the land or any part of the land not leased to the lessee, where the land or part has, prior to the expiration of the term of the lease, been declared by the Minister to be available for lease and a lease thereof is granted, within six months after the expiration of the term of the lease, to a person other than the lessee—upon the grant of the lease to that person; and

- (c) in any other case—upon the expiration of six months after the expiration of the term of the lease,

be liable to pay to the lessee—

- (i) where no part of the land is leased to the lessee, the value of the improvements on the land; or
- (ii) where part of the land is leased to the lessee, the value of the improvements on the part of the land not so leased:

Provided that, if the land or any part thereof is, prior to the expiration of the term of the lease, declared by the Minister to be available for lease, and the lessee does not, within six months after the expiration of the term of the lease, elect to take a further lease of the land or of that part, there shall be deducted from the amount payable to the lessee under this subsection the amount of such expenditure as the Minister determines has been incurred in connexion with the grant to any other person of a lease of the land or that part.

(3) Where, between the date of the expiration of the term of a lease of land upon which there are improvements and the date of the grant of a further lease of that land or part thereof, the Commonwealth derives revenue, part or all of which is attributable to the improvements on that land or part thereof, the Commonwealth shall pay to the lessee, from time to time, as the Minister determines, the difference between such sum as the Minister determines is attributable to revenue from those improvements and the amount of such expenditure as the Minister determines has been incurred by the Commonwealth in maintenance and other costs in respect of those improvements.

(4) Notwithstanding anything contained in any lease, and subject to the covenants (if any) of the lease with respect to the erection of a building on the land having fully been observed or performed, where the lease is determined or surrendered by virtue of any provision contained in the lease, the provisions of this section relating to the payment to the lessee of the value of the improvements on the land comprised in a lease upon the expiration of its term shall (so far as applicable) apply as if the term of the lease had expired on the date of the determination or surrender:

Provided that there shall be deducted from any sum payable in respect of the value of the improvements on the land the amount of such expenditure as the Minister determines has been incurred by the Commonwealth in connexion with the determination or surrender of the lease and the grant (if any) of a further lease of the land or any part thereof.

(5) For the purpose of this section—

“improvements” includes buildings and erections, but does not include improvements effected at the cost of the Commonwealth unless the Commonwealth has received or is entitled to receive payments for the improvements;

“lessee”, in relation to a lease which has been determined or surrendered or in relation to a lease the term of which has expired, means the person who was the lessee under the lease at the date of the determination or surrender or at the date of the expiration of the term, as the case may be.

(6) In this section, a reference to the value of improvements, in relation to improvements on land, shall be read as a reference to the value of the improvements determined in accordance with section 20.

### **Determination of value of improvements**

**20. (1)** In this section—

“lessee” has the same meaning as in section 19A;

“market value”, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale at a *bona fide* sale on the day immediately before the prescribed date on such reasonable terms and conditions as a *bona fide* seller would require;

“prescribed date” means, in relation to land the lease of which has expired or has been determined or surrendered, the date of expiry, determination or surrender, as the case requires.

(2) Where compensation is payable under section 19A in respect of improvements, the Minister shall, as soon as practicable after the date that is the prescribed date in relation to land, by instrument in writing determine, in accordance with this section, the market value of the improvements on the land as at the prescribed date.

(3) Where the compensation is payable by virtue of subsection 19A (2) the Minister shall, in valuing the improvements, assume that the lease of land had been renewed subject to the same covenants and conditions, and for the same term, as the lease the term of which had expired.

(4) Where the compensation is payable by virtue of subsection 19A (4), the Minister shall, in valuing the improvements, assume that the lease of the land had not been determined or surrendered.

(5) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Minister determining the value of improvements under this section.

(6) Where the Minister makes a decision determining the value of improvements under this section, the Minister shall, not later than 30 days after the date of the decision, cause a notice in writing to be given to the lessee—

- (a) giving the reasons for the decision; and
- (b) including a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, the lessee is entitled to apply to the Administrative Appeals Tribunal for a review of the decision.

(7) The validity of a decision referred to in subsection (5) shall not be taken to be affected by a failure to include in a notice for the purposes of subsection (6) a statement in accordance with paragraph (6) (b).

### **Failure of person to accept, sign and seal a lease**

**21. (1)** Where a person entitled, under section thirteen, fourteen, fifteen or seventeen of this Ordinance, to the grant of a lease of a parcel of land has, within one month after the date on which a lease of the parcel of land is tendered to him for execution, failed to accept, sign and seal the lease and, in an appropriate case, pay any amount payable by him before the grant of the lease or execute a mortgage to the Commonwealth securing the payment of any unpaid balance of the amount payable by him in respect of the grant of the lease, the Minister may, at any time during which the failure continues, by notice in the *Gazette*, after at least one month’s notice (given in accordance with the provisions of this section) of his intention so to do, determine the right of the person to the grant of the lease.

(2) The notice of the intention of the Minister to determine the right of a person to the grant of the lease shall be given in writing and signed by the Minister and shall be deemed to have been duly given to the person if it is delivered to him or sent by registered letter addressed to him at his last known place of abode or his address given to the Minister at the auction, or in the application, or if it is posted in a conspicuous place on the land to which it relates.

(3) Where the notice of intention is sent by registered letter, it shall be deemed to have been received by the person on the date on which in the ordinary course of post it would have been delivered at his last known place of abode or the address given at the date of the auction, as the case may be.

(4) Where a bid or offer has been made by a person purporting to bid or offer as the agent of another person and the last-mentioned person has not acknowledged to the Minister the authority in that behalf of the person bidding or ratified the bid, the notice of the intention of the Minister to determine the right of the person to the grant of the lease may be given in accordance with the provisions of this section to either of the persons mentioned in this subsection.

(5) A person whose right to the grant of a lease of a parcel of land has been determined under this section shall not have any claim for compensation in respect of the determination or for the recovery of any moneys paid to the Minister in respect of that parcel of land.

### **Determination of leases**

22. (1) Where by virtue of any provision contained in any lease the Commonwealth may determine the lease, the lease shall not be determined until fourteen days' notice that the Commonwealth intends, in pursuance of the powers contained in the lease, to determine the lease and setting out fully the conditions for failure to comply with which the lease may be determined has been given to the following persons:

- (a) the lessee;
- (b) where the land included in the lease is subject to a mortgage or other encumbrance registered under the Real Property Act—the mortgagee or encumbrancee;
- (c) where any person has any interest, registered under that Act, in the lease or the land—that person; and
- (d) where a caveat lodged under that Act is in force in respect of the land—the caveator.

(2) Any notice by the last preceding subsection required to be given to any person shall be in writing signed by the Minister and shall be deemed to have been duly given if—

- (a) in the case of a lessee—it is delivered to him or sent by registered post addressed to the lessee at his last known place of abode or his address specified in the lease, or if it is posted in a conspicuous place on the land to which it relates; and
- (b) in the case of any person referred to in paragraphs (b), (c) or (d) of that subsection—it is delivered to that person or sent by registered post addressed to him at his address as entered in the Register Book kept under the Real Property Act or appointed in the caveat as the place at which notices relating to the caveat may be served, as the case may be.

(3) The lessee may furnish to the Minister any explanation of the reason why he has not complied with the conditions specified in the notice.

(4) If the Minister is satisfied with the explanation, he may waive the non-compliance and may direct that the conditions be complied with within such time as he thinks fit.

(5) If no explanation is furnished, or if the Minister is not satisfied with the explanation furnished, he may—

- (a) give notice in writing to the lessee to comply with the conditions within such time as he thinks fit; or
- (b) if he considers the non-compliance to have been wilful and that the lessee has made no real effort to comply with the conditions of his lease, by notice in the *Gazette* determine the lease.

(6) If a lessee fails to comply with any direction under subsection (4) or with any notice under paragraph (a) of subsection (5) of this section, the Minister may, by notice in the *Gazette*, determine the lease.

(7) Any notification in the *Gazette* in pursuance of subsection (5) or (6) of this section shall be conclusive evidence of the lease having been determined.

(8) Notice of the determination of the lease shall also be given, in writing signed by the Minister, to the persons referred to in subsection (1) of this section in the manner specified in subsection (2) thereof.

#### **Commencement of term of lease for certain purposes**

26. Where a lessee of a parcel of land surrenders his lease for the purpose of being granted, in substitution for the surrendered lease, a lease under this Ordinance of another parcel of land, whether including the first-mentioned parcel or any portion thereof or otherwise, the term of the lease granted in substitution for the surrendered lease shall—

- (a) if only one lease is surrendered or if two or more leases which commenced on the same date are surrendered—be deemed to have commenced on the date of the commencement of the term of the surrendered lease or leases; or
- (b) if two or more leases are surrendered and the dates of the commencement of the terms of those leases differ—be deemed to have commenced on such date as the Minister determines and as is acknowledged by the lessee in the lease granted in substitution for the surrendered leases.

#### **Assignment, mortgage etc. of lease where building required to be erected on the land**

28. (1) In this section—

- (a) “building and development covenant” means a covenant in the lease whereby the lessee is required to carry out any works on the land included in the lease or on unleased land adjacent to the land included in the lease; and
- (b) a reference to a covenant in a lease or a covenant contained in a lease includes a reference to a covenant to which a lease is subject.

(2) Where a lease contains a building and development covenant, the lessee may apply to the Minister for a certificate that the building and development covenant has been complied with.

(2A) Subject to section 28AA, where, on an application under subsection (2), the Minister is satisfied that the building and development covenant has been complied with, the Minister shall issue a certificate to that effect.

**(2B)** Subject to this section, where a lease contains a building and development covenant, the lease or an interest in the lease is not capable of being transferred or assigned, either at law or in equity—

- (a) otherwise than in the case of the death of the lessee;
- (b) otherwise than in pursuance of an order made by the Family Court of Australia or any other court having jurisdiction under the *Family Law Act 1975*;
- (c) otherwise than by virtue of the operation of any law relating to bankruptcy or insolvency; or
- (d) unless the lessee has obtained—
  - (i) a certificate under subsection (2A); or
  - (ii) the consent of the Minister under this section as in force at any time before the commencement of the *City Area Leases Act (No. 2) 1973* of the Territory.

**(2C)** Subject to this section, where a lease contains a building and development covenant, the lease or an interest in the lease shall not be capable of being mortgaged unless—

- (a) the lessee has obtained a certificate under subsection (2A); or
- (b) the mortgage is required by the lessee—
  - (i) to enable the lessee to repay money borrowed by the lessee for the purpose of acquiring the lease;
  - (ii) to secure money borrowed by the lessee for the purpose of acquiring the lease; or
  - (iii) to enable the lessee to comply with the building and development covenant in the lease.

**(3)** The Minister may, on payment of the determined fee, consent to a legal or an equitable transfer or assignment of a lease or an interest in a lease where he is satisfied that the transferee—

- (a) intends to comply with the building and development covenants in the lease; and
- (b) has given such security (if any) therefore as the Minister thinks fit.

**(4)** A lessee may appeal to the Supreme Court from the refusal of the Minister to grant a certificate under subsection (2A) or the refusal of the Minister to grant his consent under subsection (3).

**(5)** The Supreme Court shall hear and determine an appeal under this section.

**(6)** On an appeal under this section, the Supreme Court—

- (a) may direct the Minister to grant a certificate under subsection (2A) or grant his consent under subsection (2C) or (3), as the case may be; or
- (b) may dismiss the appeal.

### **Restriction on transfer of leases of land with dwelling-houses**

**28A. (1)** This section applies to a lease—

- (a) granted before the date of commencement of this section and containing a covenant by the lessee restricting the right of the lessee to transfer or agree to transfer his

interest in the land or in any portion thereof, or to hold or agree to hold the same in trust, during the period of five years after the date of the lease, and a provision permitting the determination of the lease upon breach of that covenant; or

- (b) granted on or after the date of commencement of this section and containing an agreement by the parties that this section shall apply to the lease.

(2) Subject to this section, a lease to which this section applies or any interest in the lease is not, during the period of five years after the date of the lease, capable of being transferred or assigned either at law or in equity.

(3) The last preceding subsection does not apply—

- (a) where the lessee or his predecessor in title has at any time made an offer in writing to the Commonwealth to surrender the lease, and to obtain the consent in writing of all registered mortgagees and encumbrancees to the surrender, in consideration of payment by the Commonwealth of compensation in accordance with the next succeeding subsection, and the offer has not been accepted within one month after the date on which it was made; or
- (b) so as to prevent a transfer or assignment of a lease or of an interest therein—
  - (i) by operation of law or by will;
  - (ii) by way of mortgage;
  - (iii) by a mortgagee in pursuance of a power of sale as mortgagee; or
  - (iv) in pursuance of an order made by the Family Court of Australia or any other court having jurisdiction under the *Family Law Act 1975*.

(4) Where a lease to which this section applies is surrendered, and the surrender is accepted by the Commonwealth, then, notwithstanding the provisions of subsection (4) of section nineteen A of this Ordinance, the Commonwealth is liable to pay to the lessee by way of compensation an amount determined in accordance with the next succeeding subsection to be the replacement value, as at the date on which the offer to surrender the lease was made, of the improvements on the land, less an amount representing any depreciation or obsolescence of those improvements.

(5) The amount so payable to the lessee shall be determined by agreement between the Minister and the lessee, or, in default of agreement, by arbitration under the laws in force in the Territory relating to arbitration.

(6) A certificate signed by the Minister and certifying that the lessee under a lease specified in the certificate has duly made an offer in accordance with paragraph (a) of subsection (3) of this section but that the offer has not been accepted within one month after the date on which it was made is conclusive evidence that the transfer or assignment of the lease is no longer prevented or restricted by this section.

(7) A lease to which this section applies which was granted before the date of commencement of this section shall, on and after that date, operate as if the covenant, and the provision for determination of the lease, referred to in paragraph (a) of subsection (1) of this section were not included in the lease.

### **Restrictions on transfer etc. of certain leases**

**28B. (1)** This section applies to and in relation to—



- (a) a lease of a parcel of land specified in an order made by the Minister under subsection 13 (3) (being an order that includes a direction as provided for by subsection 13 (3A)) granted to the successful bidder for the right to the lease at the auction specified in the order; and
- (b) a lease of a parcel of land granted under section 17 to a person included in a class of persons specified by the Minister, for the purposes of this paragraph, by instrument in writing published in the *Gazette*.

(2) Except as provided by this section, a transaction entered into, without the consent of the Minister, before the expiration of the prescribed period after the date of commencement of a lease to which this section applies by virtue of which a person—

- (a) takes a transfer or assignment of the lease;
- (b) purchases the lease or an interest in the lease;
- (c) takes an option for the purchase of the lease or an interest in the lease;
- (d) otherwise acquires the lease or an interest in the lease; or
- (e) acquires, whether by virtue of a sub-lease or otherwise, the right to occupy the parcel of land held under the lease or a part of that parcel, for a period, whether with or without a right of occupation for a further period or further periods, or at will,

contravenes this section and is void and of no effect.

(3) Nothing in the last preceding subsection prevents—

- (a) the acquisition of a lease by way of gift;
- (b) the acquisition of a lease on sale under a writ or warrant of execution issued out of a court;
- (c) the vesting in the personal representative of a deceased person, in his capacity as such, of a lease or an interest in a lease;
- (d) any transaction that vests a lease, or an interest in a lease, in a trustee of the estate of a deceased person, in a trustee in bankruptcy or in a new trustee under an instrument, in his capacity as trustee;
- (e) a transaction that is without consideration in money or money's worth and the purpose of which is to vest a lease, or an interest in a lease, in a person beneficially entitled to the lease or interest under or by virtue of a will or intestacy;
- (f) the execution of a deed of assignment under Part XI of the *Bankruptcy Act 1924-1960*<sup>4</sup>, or of a deed of arrangement under Part XII of that Act;
- (g) a transaction—
  - (i) by way of discharge of a mortgage or sub-mortgage; or
  - (ii) by way of transfer or assignment of a mortgage to a guarantor who, in pursuance of the terms of his guarantee, has repaid the whole or part of the moneys due under the mortgage; or
- (h) a transaction entered into in pursuance of an order made by the Family Court of Australia or any other court having jurisdiction under the *Family Law Act 1975*.

(4) Consent may be given to a transaction referred to in subsection (2) of this section if it is not reasonably practicable for the lessee of the parcel of land to which the transaction relates to occupy the parcel—

- (a) by reason of a change in the place at which he is carrying on business or is employed having occurred after he became the lessee of the parcel of land;
- (b) for a reason related to the health of the lessee or a member of his family or otherwise related to his family; or
- (c) by reason of some other event related to the lessee or his family having occurred after he became the lessee of the parcel of land.

(4A) The last preceding subsection shall not be taken—

- (a) to limit the classes of transactions to and in relation to which subsection (2) of this section applies; or
- (b) to limit the discretion of the Minister to give or refuse consent to any transaction to or in relation to which subsection (2) of this section applies.

(5) The consent of the Minister to a transaction may be given by the Minister personally or by a person authorized by the Minister to consent to transactions under this section.

(6) Where a person, other than the Minister, refuses to consent to a transaction referred to in subsection (2) of this section, the applicant for the consent may request the Minister to review that refusal.

(7) A request under the last preceding subsection shall—

- (a) be in writing;
- (b) state the grounds for the request; and
- (c) be lodged with, or served by post on, the Minister or the Secretary.

(8) The Minister, after consideration of the grounds stated in the request, the application made for consent to the transaction and any information furnished in support of that application, and after making any further enquiries he thinks fit, may consent or refuse to consent to the transaction.

(9) The decision of the Minister under the last preceding subsection is final.

(10) For the purposes of this section, “the prescribed period”, in relation to a lease of a parcel of land, means—

- (a) in the case of a transaction of a kind referred to in paragraph (e) of subsection (2) of this section—the period specified in relation to the parcel in the order made by the Minister under section thirteen of this Ordinance in which the parcel was specified;
- (b) in the case of a transaction in respect of a lease of the kind referred to in paragraph (1) (b)—the period (if any) specified by the Minister in the instrument specifying a class of persons for the purposes of that paragraph; or
- (c) in any other case—a period of 5 years.

### **Prohibited transactions**

**28C.** Where a transaction referred to in subsection (2) of the last preceding section has been entered into subject to the consent of the Minister being obtained—

- (a) the transaction shall not be taken to contravene that section if the consent of the Minister is, upon application made within three months after the date of the transaction, given to the transaction within six months after that date; and
- (b) the transaction does not have any effect unless the consent of the Minister is given to the transaction or until that consent is given to the transaction.

**Contracts to evade prohibited transactions**

**28D.** Where a person—

- (a) enters into a contract or agreement purporting to do, whether presently or at some future time, or upon the happening of a contingency, anything referred to in paragraphs (a) to (e) (inclusive) of subsection (2) of section twenty-eight B of this Ordinance; or
- (b) enters into a transaction, or makes a contract or arrangement, whether orally or in writing, for the purpose of or which has the effect of, in any way, whether directly or indirectly, defeating, evading, avoiding or preventing the operation of section twenty-eight B of this Ordinance in any respect,

the contract, agreement or transaction contravenes this section and is void and of no effect.

**Restrictions on transfer etc. of leases where reserve price for the lease not paid by lessee in full**

**28DA.** (1) Subject to this section, a lease that contains an acknowledgement and a covenant in accordance with subsection (4) of section twelve A of this Ordinance is not capable of being transferred or assigned at law or in equity.

(2) The last preceding subsection does not operate so as to prevent—

- (a) the transfer or assignment of the lease by operation of law;
- (aa) the transfer or assignment of the lease in pursuance of an order made by the Family Court of Australia or any other court having jurisdiction under the *Family Law Act 1975*;
- (b) the transfer or assignment of the lease by way of gift;
- (c) the transfer or assignment of the lease made in the course of the administration of the estate of a deceased person;
- (d) the transfer or assignment of the lease to a person who has become entitled to the right to the transfer or assignment—
  - (i) on a sale under a writ or warrant of execution issued by a court;
  - (ii) on a sale by a mortgagee in the exercise of a power of sale conferred by the mortgage or by the Real Property Act; or
  - (iii) on a sale by the trustee of the estate of a bankrupt, by the trustee of a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966-1970*, by the trustee of a deed of arrangement, a deed of assignment or a composition under Part X of that Act or by the trustee of the estate of a deceased person in respect of which an order has been made under Part XI of that Act.

(3) Where—

- (a) a lease contains an acknowledgement and a covenant in accordance with subsection (4) of section twelve A of this Ordinance; and

- (b) the liability under the agreement referred to in the acknowledgement to make payment to the Commonwealth has been discharged,

the Minister shall issue to the lessee an instrument in writing stating that that liability has been discharged and, upon registration of the instrument under the Real Property Act, subsection (1) of this section ceases to apply to or in relation to that lease.

(4) The provisions of this section are in addition to, and do not derogate from, the provisions of section twenty-eight A and section twenty-eight B of this Ordinance.

### **Registration of instruments relating to prohibited transactions**

**28E. (1)** The Registrar of Titles for the purposes of the Real Property Act may, upon submission to him for registration of an instrument relating to a transaction in connexion with a lease to which section twenty-eight B of this Ordinance applies, require such evidence as he deems necessary that the transaction to which the instrument relates is not in contravention of that section or of the last preceding section, and may refuse to register the instrument until that evidence is submitted to him.

(2) Notwithstanding section twenty-eight B of this Ordinance or the last preceding section, where an instrument relating to a transaction that is in contravention of either of those sections is registered under the Real Property Act, a person who becomes registered as proprietor of an estate or interest in land under the Real Property Act by virtue of the registration of the instrument has, subject to the provisions of the Real Property Act, a good and valid title to the estate or interest in the land.

### **Recovery of payments under void transactions**

**28F. (1)** Where moneys have been paid under or in connexion with a transaction that is void by virtue of section twenty-eight B or twenty-eight D of this Ordinance, an amount equal to the moneys so paid is recoverable in a court of competent jurisdiction from the person to whom or on whose account the moneys were paid, or from the estate of that person, as a debt due to the person by whom or on whose account the moneys were paid.

(2) Moneys shall not be taken not to have been paid under or in connexion with a transaction for the purposes of the last preceding subsection by reason only of the fact that the transaction was entered into subject to the consent of the Minister being obtained and the moneys were paid before the Minister refused to consent to the transaction.

### **False statement**

**28G.** A person shall not make to the Minister or to a person authorized by the Minister to give consents under section twenty-eight B of this Ordinance a statement, whether oral or in writing, relating to an application for consent to a transaction under that section, that is, to the knowledge of the person, false or misleading in a material particular.

Penalty: Two hundred dollars.

### **Land leased to be held as undivided parcel but may be sub-let**

**29. (1)** Subject to section thirty of this Ordinance, each parcel of land included in a lease shall at all times be held and occupied by or under the lessee as one undivided parcel.

(2) Subject to this Ordinance, the land may be sub-let and the lease and any interest therein may be assigned, transferred or mortgaged.

(3) Notwithstanding any provision of the Real Property Act, where a lease to which this subsection applies includes a covenant, not being a covenant authorized or required by this

Ordinance, that the lessee will not, within a period specified in the covenant, transfer or assign by way of sale the lease or any interest in the lease except with the consent of the Minister—

- (a) the covenant has no effect; and
- (b) the lease has, and shall be taken always to have had, the same effect as it would have had if the covenant had not been included in the lease.

(4) Subsection (3) applies to a lease granted under this Ordinance on or after 1 January 1974.

(5) A right acquired, or liability incurred, before the commencement of the *City Area Leases (Amendment) Act 1979* of the Territory in respect of the breach of a covenant referred to in subsection (3), is, by force of this subsection, discharged.

### **Power of lessee to sub-let portion of building or land in certain cases**

**30. (1)** Any portion of a building erected on a parcel of land included in a lease may, subject to the lease and any sub-lease of the land, be sub-let separately from the remainder of that building.

(2) Where a portion of a building is sub-let separately from the remainder of the building, any portion of the parcel of land on which the building is erected may be sub-let with the portion of the building separately from the remainder of the parcel of land, provided that that portion of the parcel of land adjoins that portion of the parcel of land on which the portion of the building is erected.

### **Effect of provisions in sub-leases drafted for operation of rent payable under sub-leases**

**30A. (1)** For the purposes of this section—

- (a) the prescribed date is the first day of January, One thousand nine hundred and seventy-one; and
- (b) a reference to ground rent shall be read as a reference to rent under the relevant lease under this Ordinance held from the Commonwealth.

(2) Subject to this section, a term, provision or covenant in a sub-lease entered into before the prescribed date that makes provision whereby the amount payable under the sub-lease by the sub-lessee to the sub-lessor, whether by way of rent or otherwise, is to be, or may be, increased or decreased in the event of—

- (a) a variation in the annual ground rent payable in respect of the premises comprised in the sub-lease;
- (b) a variation in the rates so payable; or
- (c) a variation in the annual ground rent or rates so payable,

shall, on and after the prescribed date, be read and construed and has effect—

- (d) as if any amount that was payable before the prescribed date by the sub-lessor as ground rent in respect of the premises had been payable as rates; and
- (e) as if—
  - (i) in the case of a term, provision or covenant referring to ground rent only—the reference to ground rent were a reference to rates; or
  - (ii) in the case of a term, provision or covenant referring to ground rent or rates—the reference to ground rent or rates were a reference to rates.

(3) The last preceding subsection does not prevent the making by the sub-lessor and sub-lessee under a sub-lease of an agreement in writing having an effect that is inconsistent with the last preceding subsection and, if such an agreement is made—

- (a) the agreement has effect according to its tenor; and
- (b) the last preceding subsection shall be deemed not to have applied, and not to apply, to or in relation to the sub-lease.

(4) On an application by the sub-lessor or the sub-lessee under a sub-lease entered into before the prescribed date containing a term, provision or covenant that makes provision whereby the amount payable under the sub-lease by the sub-lessee to the sub-lessor, whether by way of rent or otherwise, is to be, or may be increased or decreased in the event of a variation referred to in paragraph (a), (b) or (c) of subsection (2) of this section, the Supreme Court may, if it is satisfied that the application of that subsection to and in relation to the sub-lease is not, or would not be, in all circumstances of the case, just and equitable, by order direct that that subsection shall be deemed not to have applied, and is not to apply, to and in relation to the term, provision or covenant and, in that case, the term, provision or covenant in the sub-lease shall be deemed to have continued, and to continue, to have effect as if this section had not been made.

(5) Where—

- (a) subsection (2) of this section has effect in relation to a sub-lease; and
- (b) the sub-lease confers on the sub-lessee the right to exercise an option to renew the sub-lease,

that right shall be read and construed as a right to exercise an option to renew the sub-lease as it has effect by virtue of that subsection.

(6) This section—

- (a) applies to the Commonwealth; and
- (b) binds the Commonwealth,

in its capacity as a sub-lessee.

## **Fences**

**31. (1)** The Minister may, by notice in writing to a lessee, require the lessee to erect a fence on the boundary or any portion of the boundary of the land included in his lease.

(2) Where the boundary to be fenced is a common boundary between two parcels of land included in different leases, the Minister may, by notice in writing to each of the lessees, require them jointly to erect the fence.

(3) A notice under this section shall specify the fence to be erected and the portion of the boundary upon which it is to be erected.

(4) If a fence in compliance with the notice is not erected within one month after the date of the notice—

- (a) the Minister may, at the cost of the lessee, cause the fence to be erected; and
- (b) the lessee shall pay to the Minister on demand the amount fixed by the Minister as the cost of erecting the fence or as the proportion payable by the lessee of that cost.

(5) Where, in any building plan or design prepared or approved by the proper authority, or any plans and specifications approved by the Building Controller, for buildings or other

structures to be erected on land subject to this Ordinance, a fence is shown or provided for on the common boundary or portion of the common boundary between two parcels of land, the lessee of either of the parcels of land shall have the right, power and authority to erect, maintain and use a fence in the position shown upon the plan or design, and the lessee who has erected any such fence may recover in any Court of competent jurisdiction from the lessee of the other parcel of land half the cost of the erection of the fence, less depreciation (if any) up to the time when proceedings may be commenced.

(6) Proceedings under subsection (5) may be commenced at any time within 6 months after the commencement of the erection of the fence.

(7) Subsection (5) applies only where both parcels of land are leased at the time of the commencement of the erection of the fence.

(8) Where land referred to in subsection (1) or (2) adjoins Territory Land leased under the *City Area Leases Act 1936* of the Territory, subsections (1) to (7) (inclusive) have effect with respect to the adjoining Territory Land as if it were National Land leased under this Ordinance.

### **Party-walls**

**32. (1)** In this section, “party-wall” means a wall or structure designed for the common use of two or more buildings and erected or to be erected upon a common boundary or portion of a common boundary between two parcels of land subject to this Ordinance, and extending laterally into each of such parcels of land, and includes any wall, wholly or partly used for the support of two or more buildings and erected in connexion with a building in respect of which there is applicable a certificate—

- (a) of the kind referred to in regulation 69A of the repealed Canberra Building Regulations, as in force when the certificate was issued;
- (b) of the kind referred to in regulation 69A of the repealed Canberra Building Regulations in its continued application, by virtue of subsection 4 (3) of the *Building Act 1972* of the Territory, when the certificate was issued; or
- (c) issued under subsection 53 (2) or (3) of the *Building Act 1972* of the Territory.

(2) Where in any building plan or design prepared or approved by the proper authority, or in plans and specifications approved by the Building Controller, for buildings to be erected on land subject to this Ordinance a party-wall is shown or provided for on the common boundary or portion of the common boundary between two parcels of land—

- (a) the lessee of each of the parcels of land shall, during the continuance of his lease, have the right, power and authority—
  - (i) to erect, maintain and use a party-wall in the position shown upon the building plan or design; and
  - (ii) to use for the support of the building or buildings provided for in or shown upon the building plan or design and erected upon the parcel of land of which he is lessee any party-wall so erected;
- (b) the lessees of the two parcels of land may agree as to the lessee by whom the party-wall shall be erected and in what proportions the cost of erection shall be borne by them;
- (c) where a lessee of one parcel of land has at his own expense erected a party-wall, the lessee of the other parcel of land shall forthwith after commencing the erection of a

building on the other parcel of land pay to the first-mentioned lessee a proportion of the cost of the erection of the party-wall;

- (d) in default of agreement between lessees as to the apportionment of the cost of erecting a party-wall, the Minister may at the request of either lessee determine the cost of erecting the party-wall, and the proportion of the cost to be borne by each lessee;
- (e) where any period has elapsed between the date of completion of the party-wall by the lessee of one parcel of land and the date of the commencement of the erection of a building on the other parcel of land, a reasonable allowance shall be made for depreciation of the party-wall in determining the proportion payable by the other lessee of the cost of erection of the party-wall; and
- (f) the amount agreed upon or determined by the Minister as payable by one lessee to another lessee under this section shall be a debt due and recoverable by the other lessee in any Court of competent jurisdiction.

(3) Where land leased under this Ordinance adjoins Territory Land leased under the *City Area Leases Act 1936* of the Territory, subsections (1) and (2) have effect with respect to the adjoining Territory Land as if it were National Land leased under this Ordinance.

#### **Land to be kept clean**

35. (1) The land included in a lease shall at all times be kept by the lessee clean, tidy, and free from debris, dry herbage, rubbish, carcasses of animals and other unsightly or offensive matter.

(2) Upon a non-compliance with this section, the Minister may at the cost of the lessee cause any matter or thing to be removed from the land and restore the land to a clean and tidy condition.

(3) The lessee shall pay to the Minister on demand the amount fixed by the Minister as the cost incurred by the Minister by reason of the failure of the lessee to comply with subsection (1) of this section.

#### **Certain provisions not to apply**

37. The applied provisions of the *Leases Ordinance 1918* do not have effect with respect to land that—

- (a) is leased under this Ordinance; or
- (b) is subject to a lease continued in force by subsection 2 (2) of the *City Area Leases Act 1936* of the Territory and is, on and after Self-Government Day, National Land.

#### **Refund of amounts paid for the grant of a lease in certain cases**

37A. (1) The Minister may, subject to the next succeeding subsection, authorize the refund to a person who has surrendered a lease granted under this Ordinance or whose lease has been determined in accordance with this Ordinance of an amount not exceeding the amount paid by the person for or in respect of the grant of the lease.

(2) The last preceding subsection does not authorize the refund of an amount unless—

- (b) the lease was a lease for residential purposes; and
- (c) the person to whom the lease was granted has been unable, for reasons which, in the opinion of the Minister, warrant the refund, to comply with the covenants of the lease requiring the erection of a building on the land comprised in the lease.



(3) The Minister may, subject to the next succeeding subsection, authorise the refund to a person who surrenders the right to the grant of a lease under this Ordinance of a parcel of land and of an amount not exceeding the amount paid by the person for or in respect of the grant of the lease.

(4) The last preceding subsection does not authorize the refund of an amount unless—

- (b) the conditions subject to which the right to the grant of the lease was obtained included a condition that the lease would be a lease for residential purposes;
- (c) the Minister is satisfied that reasons exist that justify the refund; and
- (d) the surrender of the right to the grant of the lease is made before the Minister has, in pursuance of section twenty-one of this Ordinance, given notice of his intention to determine under that section the right of the person to the grant of the lease.

### **Determined fee**

**37B.** The Minister may, by notice in writing in the *Gazette*, determine fees for the purposes of this Ordinance.

### **Regulations**

**38.** The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for and in relation to—

- (a) the periods for which leases may be granted;
- (b) the forms of leases and the covenants and conditions to be contained therein;
- (c) the method of recovering moneys due and unpaid under leases;
- (d) the determination of leases for non-fulfilment of covenants or conditions;
- (e) the method of recovering land on the determination of leases;
- (f) the easements and other rights and privileges which may be included in any lease as appurtenant to the land included in the lease;
- (g) the imposition, by way of damages recoverable summarily as a debt due to the Commonwealth, of a fine, whether in substitution for or in addition to the determination of the lease or not, not exceeding Ten dollars or, where the breach is a continuing breach, of Ten dollars per day for every day the breach continues, for the breach by a lessee of any covenant contained in his lease.

## THE SCHEDULE

Section 2

### ORDINANCES REPEALED BY THIS ORDINANCE

*City Area Leases Ordinance 1924* (No. 8 of 1924)  
*City Area Leases Ordinance (No. 2) 1924* (No. 13 of 1924)  
*City Area Leases Ordinance 1925* (No. 10 of 1925)  
*City Area Leases Ordinance 1926* (No. 5 of 1926)  
*City Area Leases Ordinance (No. 2) 1926* (No. 9 of 1926)  
*City Area Leases Ordinance (No. 3) 1926* (No. 18 of 1926)  
*City Area Leases Ordinance 1929* (No. 13 of 1929)  
*City Area Leases Ordinance 1934* (No. 20 of 1934)  
*City Area Leases Ordinance 1935* (No. 1 of 1935)  
*City Area Leases Ordinance (No. 2) 1935* (No. 17 of 1935)

### NOTES

1. This reprint sets out the provisions of the *City Area Leases Ordinance 1936*, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The provisions of the *City Area Leases Ordinance 1936* as shown in this reprint comprise Ordinance No. 31, 1936 amended as indicated in the Tables below.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

#### Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
City Area Leases Ordinance 1936	31, 1936	23 July 1936	23 July 1936	—
City Area Leases Ordinance (No. 2) 1936	38, 1936	17 Sept 1936	17 Sept 1936	—
City Area Leases Ordinance (No. 3) 1936	40, 1936	24 Sept 1936	24 Sept 1936	—
City Area Leases Ordinance 1938	21, 1938	9 June 1938	9 June 1938	—
as amended by				
Ordinances Revision Ordinance 1938	35, 1938	15 Dec 1938	15 Dec 1938	—
City Area Leases Ordinance 1947	14, 1947	11 Dec 1948	11 Dec 1948	S. 3
City Area Leases Ordinance 1950	18, 1950	21 Dec 1950	21 Dec 1950	—
City Area Leases Ordinance 1951	8, 1951	9 Aug 1951	9 Aug 1951	—
City Area Leases Ordinance 1957	18, 1957	19 Dec 1957	19 Dec 1957	—
Ordinances Revision Ordinance 1959	21, 1959	23 Dec 1959	31 Dec 1959	—
City Area Leases Ordinance 1961	12, 1961	13 July 1961	S. 11: 13 July 1961 Remainder: 29 Mar 1962 (see <i>Gazette</i> 1962, p. 1041)	S. 12

NOTES—continued

Table of Ordinances—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>City Area Leases Ordinance 1963</i>	18, 1963	19 Sept 1963	19 Sept 1963	—
<i>City Area Leases Ordinance 1964</i>	7, 1964	21 Aug 1964	21 Aug 1964	S. 7 (2)
<i>Ordinances Revision (Decimal Currency) Ordinance 1966</i>	19, 1966	23 Dec 1966	23 Dec 1966	—
<i>City Area Leases Ordinance 1967</i>	13, 1967	24 May 1967	24 May 1967	—
<i>City Area Leases Ordinance 1968</i>	3, 1968	14 Mar 1968	14 Mar 1968	—
<i>City Area Leases Ordinance (No. 2) 1968</i>	28, 1968	19 Dec 1968	19 Dec 1968	—
<i>City Area Leases Ordinance 1969</i>	25, 1969	2 Oct 1969	2 Oct 1969	—
<i>City Area Leases Ordinance 1970</i>	45, 1970	17 Dec 1970	1 Jan 1971	Ss. 2 (2), 23 (2), 28 and 29
<i>City Area Leases Ordinance 1971</i>	11, 1971	25 Mar 1971	25 Mar 1971	S. 3 (2)
<i>City Area Leases Ordinance 1973</i>	3, 1973	22 Feb 1973	22 Feb 1973	—
<i>City Area Leases Ordinance (No. 2) 1973</i>	58, 1973	19 Dec 1973	19 Dec 1973	S. 3
<i>City Area Leases Ordinance 1974</i>	13, 1974	11 Apr 1974	11 Apr 1974	—
<i>City Area Leases Ordinance (No. 2) 1974</i>	19, 1974	30 May 1974	30 May 1974	—
<i>City Area Leases Ordinance (No. 3) 1974</i>	25, 1974	17 July 1974	17 July 1974	—
<i>City Area Leases Ordinance (No. 4) 1974</i>	50, 1974	24 Oct 1974	24 Oct 1974	—
<i>City Area Leases Ordinance (No. 5) 1974</i>	56, 1974	12 Dec 1974	12 Dec 1974	—
<i>City Area Leases Ordinance 1975</i>	32, 1975	1 Oct 1975	1 Oct 1975	—
<i>City Area Leases Ordinance 1976</i>	12, 1976	29 Mar 1976	29 Mar 1976	—
<i>City Area Leases Ordinance (No. 2) 1976</i>	25, 1976	10 June 1976	10 June 1976	S. 3
<i>City Area Leases (Amendment) Ordinance 1977</i>	57, 1977	24 Oct 1977	24 Oct 1977	—
<i>Ordinances Revision (Metric Conversion) Ordinance 1977</i>	64, 1977	22 Dec 1977	22 Dec 1977	—
<i>City Area Leases (Amendment) Ordinance 1978</i>	18, 1978	13 July 1978	13 July 1978	—
<i>City Area Leases (Amendment) Ordinance 1979</i>	23, 1979	9 Aug 1979	9 Aug 1979	—
<i>City Area Leases (Amendment) Ordinance 1982</i>	56, 1982	13 July 1982	13 July 1982	S. 10
<i>City Area Leases (Amendment) Ordinance 1983</i>	54, 1983	10 Nov 1983	10 Nov 1983	—
<i>City Area Leases (Amendment) Ordinance (No. 2) 1983</i>	57, 1983	25 Nov 1983	25 Nov 1983	—
<i>City Area Leases (Amendment) Ordinance 1984</i>	39, 1984	2 Aug 1984	2 Aug 1984	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	Ss. 36 and 37
<i>City Area Leases (Amendment) Ordinance 1986</i>	16, 1986	13 June 1986	13 June 1986	—

NOTES—continued

Table of Ordinances—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>City Area Leases (Amendment) Ordinance (No. 2) 1986</i>	20, 1986	30 June 1986	1 July 1986	—
<i>City Area Leases (Amendment) Ordinance 1987</i>	48, 1987	16 Sept 1987	16 Sept 1987	—
<i>Interim Territory Planning Ordinance 1988</i>	88, 1988	21 Dec 1988	Ss. 1 and 2: 21 Dec 1988 Remainder: 31 Jan 1989 (see <i>Gazette</i> 1989, No. S38)	—
<i>National Land Ordinance 1989</i> as amended by	39, 1989	10 May 1989	11 May 1989 (see s. 2 and <i>Gazette</i> 1989, No. S164)	—
<i>National Land (Amendment) Ordinance (No. 2) 1997</i>	3, 1997	19 Sept 1997	19 Sept 1997	—

**NOTES—continued**

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 2 .....	rep. No. 39, 1989
S. 3 .....	am. No. 21, 1938; No. 12, 1961; No. 45, 1970; No. 3, 1973; No. 56, 1982; No. 20, 1986; No. 39, 1989; No. 39, 1989 (as am. by No. 3, 1997)
S. 4 .....	rs. No. 39, 1989
Ss. 5, 6 .....	am. No. 39, 1989 (as am. by No. 3, 1997)
S. 7 .....	rep. No. 25, 1969
S. 8A.....	ad. No. 3, 1968 am. No. 28, 1968; No. 64, 1977
S. 9 .....	am. No. 7, 1964 rs. No. 12, 1976; No. 57, 1977
S 9A.....	ad. No. 7, 1964 am. No. 19, 1966; No. 13, 1967; No. 45, 1970 rep. No. 12, 1976 ad. No. 57, 1977
S. 9B.....	ad. No. 7, 1964 am. No. 19, 1966; No. 45, 1970; No. 12, 1976 rs. No. 57, 1977
S. 9C.....	ad. No. 7, 1964 rs. No. 57, 1977
Ss. 9CA-9CD.....	ad. No. 57, 1977
S. 9D.....	ad. No. 56, 1974
S. 9E.....	ad. No. 56, 1974 am. No. 67, 1985
S. 10 .....	am. No. 48, 1987
S. 11 .....	rep. No. 21, 1959
S. 11A.....	ad. No. 38, 1936 am. No. 40, 1936; No. 45, 1970; No. 56, 1982; No. 88, 1988; No. 39, 1989
S. 11B.....	ad. No. 45, 1970 rs. No. 56, 1982
S. 11C.....	ad. No. 45, 1970 am. No. 56, 1982; No. 38, 1989
S. 12 .....	am. No. 45, 1970
S. 12A.....	ad. No. 45, 1970 am. No. 13, 1974; No. 23, 1979
S. 13 .....	am. No. 18, 1950 rs. No. 12, 1961 am. No. 18, 1963; No. 7, 1964; No. 45, 1970; No. 25, 1974; No. 18, 1978; No. 57, 1983
S. 14 .....	am. No. 14, 1947; No. 18, 1950 rs. No. 12, 1961 am. No. 45, 1970; No. 25, 1974; No. 25, 1976
S. 15 .....	rs. No. 12, 1961 am. No. 45, 1970
S. 16 .....	rep. No. 12, 1961
S. 17 .....	am. No. 20, 1986
S. 17A.....	ad. No. 18, 1957 am. No. 12, 1961; No. 45, 1970
S. 17AA .....	ad. No. 39, 1989 (as am. by No. 3, 1997)
S. 17B.....	ad. No. 45, 1970
S. 18 .....	am. No. 38, 1936 rs. No. 12, 1961 am. No. 19, 1966 rs. No. 45, 1970 am. No. 13, 1974; No. 38, 1989
S. 18A.....	ad. No. 13, 1974
S. 18B.....	ad. No. 13, 1974 rs. No. 56, 1982
S. 18C.....	ad. No. 13, 1974 rep. No. 56, 1982

**NOTES—continued**

**Table of Amendments—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 19 .....	am. No. 12, 1961; No. 28, 1968; No. 45, 1970; No. 39, 1989
S. 19AA .....	ad. No. 45, 1970 am. No. 38, 1989
S. 19A.....	ad. No. 21, 1938 am. No. 12, 1961; No. 7, 1964; No. 16, 1986
S. 20 .....	am. No. 12, 1961 rep. No. 45, 1970 ad. No. 16, 1986
S. 21 .....	rs. No. 12, 1961 am. No. 45, 1970
S. 23 .....	am. No. 21, 1959 rep. No. 45, 1970
S. 24 .....	rep. No. 21, 1959
S. 25 .....	am. No. 7, 1964; No. 19, 1966 rep. No. 45, 1970
S. 26 .....	am. No. 45, 1970
S. 27 .....	rep. No. 45, 1970
S. 28 .....	am. No. 21, 1938; No. 11, 1971; Nos. 3 and 58, 1973; No. 13, 1974; No. 32, 1975; No. 54, 1983; No. 39, 1984; No. 20, 1986
S. 28AA .....	ad. No. 32, 1975 rep. No. 39, 1989
S. 28A.....	ad. No. 8, 1951 am. No. 54, 1983
S. 28B.....	ad. No. 18, 1963 am. No. 7, 1964; No. 56, 1982; No. 54, 1983; No. 39, 1984; No. 38, 1989
Ss. 28C, 28D .....	ad. No. 18, 1963
S. 28DA .....	ad. No. 45, 1970 am. No. 54, 1983; No. 39, 1989
Ss. 28E, 28F.....	ad. No. 18, 1963
S. 28G .....	ad. No. 18, 1963 am. No. 19, 1966
S. 29 .....	am. No. 23, 1979; No. 39, 1989
S. 30 .....	am. No. 39, 1989 (as am. by No. 3, 1997)
S. 30A.....	ad. No. 11, 1971
Ss. 31, 32 .....	am. No. 21, 1938; No. 3, 1973; No. 39, 1989
Ss. 33, 34 .....	rep. No. 45, 1970
S. 36 .....	rep. No. 45, 1970 ad. No. 19, 1974 rep. No. 50, 1974
S. 37 .....	rs. No. 39, 1989
S. 37A.....	ad. No. 21, 1938 rep. No. 21, 1959 ad. No. 12, 1961 am. No. 45, 1970
S. 37B.....	ad. No. 20, 1986
S. 38 .....	am. No. 19, 1966

3. Ss. 3 (3)—The *Building Ordinance 1964* was repealed by the *Building Act 1972* of the Territory (No. 26, 1972).

4. S. 28B (3)—The *Bankruptcy Act 1924* was repealed by the *Bankruptcy Act 1966* (No. 33, 1966).

# AUSTRALIAN CAPITAL TERRITORY

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## *Provisions of the* **CITY AREA LEASES REGULATIONS<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
- as modified by the *National Land Ordinance 1989*;  
and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

### TABLE OF PROVISIONS

#### Regulation

1. Citation
  2. Interpretation
  4. Power of entry on leased lands
  5. Reservation of minerals
  6. Right to construct and maintain sewers etc.
  7. Recovery of moneys due under lease
  8. Recovery of possession of land after determination of lease
  9. Prescribed authorities under section 25
  10. Appeals against re-appraisalment
- 

#### **Citation**

1. These Regulations may be cited as the City Area Leases Regulations.<sup>2</sup>

#### **Interpretation**

2. In these Regulations, unless the contrary intention appears—  
“the Ordinance” means the applied provisions of the *City Area Leases Ordinance 1936*.

#### **Power of entry on leased lands**

4. The Minister may, at all reasonable times and in any reasonable manner, enter upon the land included in any lease and inspect the land and any improvements thereon.

#### **Reservation of minerals**

5. Every lease shall reserve unto the Commonwealth all minerals and that reservation shall be read as a reservation to the Commonwealth of all minerals and mineral substances in or on the leased land, including gold, silver, copper, tin, metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, stone, clay, gravel and sand.

#### **Right to construct and maintain sewers etc.**

6. The Minister may, without payment of compensation, enter upon the land included in any lease and may thereon or therein construct and maintain sewers, drains, and connexions therewith, and electric power and gas mains and sub-mains and connexions therewith, and

other like services, and may make such excavations and construct such works as are necessary or convenient for those purposes.

### **Recovery of moneys due under lease**

7. Where moneys are due and unpaid under a lease, the Minister suing in his official name may sue for and recover from the lessee the amount of the moneys due before a Court of competent jurisdiction.

### **Recovery of possession of land after determination of lease**

8. If, after a lease has been determined, the lessee or any person apparently in occupation or possession of the land fails on demand by the Minister to deliver up possession thereof, the Magistrates Court may, on the application of the Minister, issue a warrant authorizing any member of the Police Force, within a period of not more than 30 days from the date of the warrant, to enter on the land, by force and with such assistance as is necessary, and deliver possession thereof to the Minister.

### **Prescribed authorities under section 25**

9. (1) The prescribed authority for the purpose of subsection (1) of section 25 of the Ordinance shall be the Minister.

(2) The prescribed authority for the purpose of subsection (3) of section 25 of the Ordinance shall be a person appointed by the Minister to act for the purpose of that subsection.

### **Appeals against re-appraisalment**

10. (1) An appeal by a lessee under section 27 of the Ordinance shall be in writing, shall state the grounds of appeal and shall be lodged with the Secretary of the Department within 2 months after notice of re-appraisalment of the unimproved value of the land concerned has been given to the lessee, or within such further time as the Minister, in special circumstances, allows.

(2) On receipt of an appeal, the Secretary shall forthwith forward the appeal to the Chairman of the Appeal Board, who shall fix a time and place for the hearing of the appeal, and shall cause the lessee to be notified accordingly.

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## **NOTES**

1. This reprint sets out the provisions of the City Area Leases Regulations, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The City Area Leases Regulations (in force under the *City Area Leases Ordinance 1936*) (a) as shown in this reprint comprise Regulations made on 28 July 1936 amended as indicated in the Tables below.

The City Area Leases Regulations were amended by the *Magistrates Court Ordinance 1985* and the *National Land Ordinance 1989*. The amendments have been incorporated in this reprint.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).



## Table of Regulations

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
—	6 Aug 1936	6 Aug 1936	—
1944 No. 6	7 Dec 1944	7 Dec 1944	—
1980 No. 3	25 Mar 1980	25 Mar 1980	—
as amended by	9 Oct 1980		—
1980 No. 14		R. 1: 25 Mar 1980 R. 2: 9 Oct 1980	

- (a) The City Area Leases Regulations were also amended by the *Seat of Government (Designation) Ordinance 1938* (No. 25, 1938) as amended by the *Ordinances Revision Ordinances 1938 and 1959* (No. 35, 1938 and No. 21, 1959).

Section 2 of the *Seat of Government (Designation) Ordinance 1938*, as amended, provides as follows:

“2. Where, in any Ordinance, not being an Ordinance specified in the Schedule to this Ordinance, or in any regulation or rule made under an Ordinance, the words ‘Territory for the Seat of Government’ or ‘Territory for the Seat of Government of the Commonwealth’ or ‘Territory for the Seat of Government of the Commonwealth of Australia’ or ‘Federal Capital Territory’ appear, the Ordinance, regulation or rule (as the case may be) is amended by omitting those words and inserting in their stead the words ‘Australian Capital Territory’.”

The amendments have been incorporated in this reprint but do not appear in the Table of Amendments.

## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
R. 2 .....	am. Ordinance No. 39, 1989
R. 3 .....	rep. Ordinance No. 39, 1989
R. 8 .....	am. 1980 No. 3; Ordinance No. 67, 1985
R. 9 .....	ad. 1944 No. 6
R. 10 .....	ad. 1944 No. 6 am. 1980 No. 3; Ordinance No. 39, 1989
The Schedule .....	am. 1980 No. 3 (as am. by 1980 No. 14) rep. Ordinance No. 39, 1989

## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **CROWN LANDS ACT 1884 (NEW SOUTH WALES)<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
- as modified by the *National Land Ordinance 1989*;  
and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

#### **TABLE OF PROVISIONS**

Section

#### **PART I—PRELIMINARY AND GENERAL PROVISIONS**

- 1. Short title
  - 4. Interpretation
  - 111. Road of access through leased land
- 

An Act to regulate the alienation occupation and management of crown lands and for other purposes

#### **PART I—PRELIMINARY AND GENERAL PROVISIONS**

##### **Short title**

1. This Act may be cited as the “Crown Lands Act 1884”.<sup>2</sup>

##### **Interpretation**

4. In this Act, unless the context necessarily requires a different meaning, the expression—

“Lease” means a lease of land vested in the Commonwealth;

“Licence” means a licence to occupy or use any land vested in the Commonwealth.

##### **Road of access through leased land**

111. Every holder of a lease or licence shall be entitled to a road of access and also to free ingress and egress thereby to and from the lands held by him to the nearest public road through and over any land vested in the Commonwealth whether subject to a lease or not if no access to the lands held by him by means of a public road or track shall be provided, and such road shall not interfere with any buildings garden stock or drafting yards belonging to such lessee or licensee and shall in every case follow such a direction and be so marked as to occasion as little damage or inconvenience to the lessee as may be possible, and the Minister shall have power to close any such road upon giving three months notice to that effect in the *Gazette*.

## NOTES

1. The Crown Lands Act 1884 of the State of New South Wales (48 Vic. No. 18) as shown in this reprint was one of the laws in force in the Australian Capital Territory before 1 January 1911 and was therefore continued in force by the *Seat of Government Acceptance Act 1909* of the Commonwealth.
2. This reprint sets out the provisions of the Crown Lands Act 1884 of the State of New South Wales, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*. The text of the Crown Lands Act 1884 of the State of New South Wales in its application in the Territory as at 10 August 1984 comprises Part 9 of Schedule 2 to the *New South Wales Acts Application Act 1984* (No. 41, 1984) as amended, for details of those amendments and amending laws made before 1 January 1911 see (a).

The Crown Lands Act 1884 of the State of New South Wales in its application in the Territory has been amended since 10 August 1984 as indicated in the Tables below.

### Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Self-Government (Consequential Amendments) Ordinance</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

- (a) The Crown Lands Act 1884, in its application in the Territory, comprises the Crown Lands Act 1884 as amended before 1 January 1911 by the following Acts—

*Crown Lands Act of 1889*  
*Crown Lands Act of 1895*  
*Public Roads Act of 1897*  
*Sydney Harbour Trust Act, 1900*  
*Timber Licenses Act, 1902*  
*Crown Lands Amendment Act of 1905*  
*Mining Act, 1906*  
*Mining (Amendment) Act, 1907*  
*Crown Lands (Amendment) Act, 1908*  
*Forestry Act, 1909*  
*Crown Lands (Amendment) Act, 1910,*

and as further amended after that date by the *New South Wales Acts Application Act 1984*. The amendments so made have been incorporated in the text of the Crown Lands Act 1884 in Part 9 of Schedule 2 to the last mentioned Act.

Sections 2 and 3, sections 5 to 110 (inclusive), sections 112 to 145 (inclusive) and the Schedule were repealed by the *New South Wales Acts Application Act 1984*.

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 111 .....	am. No. 38, 1989

# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## **DEDICATION BY USER LIMITATION ACT 1902 (NEW SOUTH WALES)<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

### **TABLE OF PROVISIONS**

Section

1. Short title
  3. No dedication of right-of-way against Commonwealth
- 

An Act to consolidate enactments relating to dedication by user

#### **Short title**

1. This Act may be cited as the Dedication by User Limitation Act 1902.<sup>2</sup>

#### **No dedication of right-of-way against Commonwealth**

3. No dedication or grant of a right-of-way shall be presumed or allowed to be asserted or established as against—

- (a) the Commonwealth; or
- (b) persons holding lands in trust for any public purpose;

by reason only of user, and this whether in proceedings instituted by or on behalf of the Commonwealth or not, and whether the user commenced before or after the commencement of this Act.

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### **NOTES**

1. The Dedication by User Limitation Act 1902 of the State of New South Wales (No. 45, 1902) as shown in this reprint was one of the laws in force in the Australian Capital Territory before 1 January 1911 and was therefore continued in force by the *Seat of Government Acceptance Act 1909* of the Commonwealth.
2. This reprint sets out the provisions of the Dedication by User Limitation Act 1902 of the State of New South Wales, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*. The text of the Dedication by User Limitation Act 1902 of the State of New South Wales in its application in the Territory as at 10 August 1984 comprises Part 10 of Schedule 2 to the *New South Wales Acts Application Act 1984* (No. 41, 1984) as amended, for details of those amendments see (a).
  - (a) The Dedication by User Limitation Act 1902 of the State of New South Wales in its application in the Territory comprises the Dedication by User Limitation Act 1902 of the State of New South Wales as amended by the *New South Wales Acts Application Act 1984* of the Territory.  
Section 2 was repealed by the *New South Wales Acts Application Act 1984* of the Territory.

# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## LAKES ORDINANCE 1976

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

### TABLE OF PROVISIONS

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2. Commencement
3. Repeal
4. Interpretation
5. Declaration of area as lake
- 5A. Power of Minister to determine fees

#### PART II—ADMINISTRATION

6. Delegate of the Minister
7. Powers of delegate
8. Inspectors
9. Powers of inspectors etc.
10. Obstruction of inspectors

#### PART III—CONTROL OF A LAKE

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12. Unauthorised taking of water
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##### *Division 1—General*

15. Erection of signs
16. Prohibitions relating to boats etc.
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18. Interference with signs
19. Approved buoys, wharves and jetties
20. Restrictions on mooring
21. Prohibition of use of lake area or parts of lake
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23. Conduct of regattas etc.
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# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## **LAKES ORDINANCE 1976<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
- as modified by the *National Land Ordinance 1989*;  
and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

An Ordinance to provide for the Administration, Control and Use of Certain Lakes

### **PART I—PRELIMINARY**

#### **Short title**

1. This Ordinance may be cited as the *Lakes Ordinance 1976*.<sup>2</sup>

#### **Commencement**

2. This Ordinance shall come into operation on such date as is fixed by the Minister by notice published in the *Gazette*.<sup>1</sup>

#### **Repeal**

3. The Ordinances set out in Schedule 1 are repealed.

#### **Interpretation**

4. (1) In this Ordinance, unless the contrary intention appears—

“associated work” includes a wharf or jetty, the property of the Commonwealth, erected within a lake area;

“boat” includes launch, yacht, canoe, raft, pontoon and anything capable of carrying persons or goods through or on water;

“closed area” means a part of a lake declared by the Minister under section 22 to be a closed area;

“commercial activities” means:

- (a) selling, or offering for sale, food, drink or other articles or goods;
- (b) letting, or offering to let, on hire bicycles, boats or other articles;
- (c) carrying, or offering to carry, passengers, articles or goods in or on a boat for fee or reward;
- (d) carrying, or offering to carry, passengers, articles or goods in or on a horse-drawn vehicle;
- (e) carrying on the business of boat repair; or
- (f) undertaking such other activities as are prescribed for the purposes of this definition;

“Dairy Bridge” means the bridge by which Dairy Road is carried across the Molonglo River;

“delegate of the Minister” means the person who is the delegate of the Minister for the purposes of this Ordinance by virtue of an appointment under section 6;

“foreshores” means—

- (a) in relation to Lake Ginninderra—the land described in Schedule 2; and
- (b) in relation to any other lake—the area of land bounded by the level of the lake and an imaginary line drawn at a distance of 100 metres from the high water level of the lake,

other than land held under lease from the Commonwealth or occupied with the authority of the Commonwealth or by virtue of a law in force in the Territory;

“inspector” means an inspector appointed under section 8;

“lake” means Lake Burley Griffin, Lake Ginninderra or any other body of water declared by the Minister under section 5 to be a lake;

“lake area” means the area comprising a lake, the foreshores of the lake and the islands (if any) in the lake;

“Lake Burley Griffin” means the waters of the Molonglo River lying between Scrivener Dam and Dairy Bridge;

“Lake Ginninderra” means that body of water lying within the land described in Schedule 2;

“owner”, in relation to land, includes any person having an estate or interest in the land;

“Police Force” means police force of the Territory;

“power boat” means a boat propelled by mechanical power;

“prohibited area” means a part of a lake declared by the Minister under section 21 to be a prohibited area;

“sports club” means an association or body of persons, whether incorporated or not, established for sporting or athletic purposes;

“this Ordinance” includes the Regulations;

“visible”, in relation to a light, means visible on a dark night with a clear atmosphere.

(2) In this Ordinance, a reference to a part of a lake area or an associated work by name is a reference to the part of the lake area or associated work so named by virtue of a determination under the *National Memorials Ordinance 1928*.

(3) For the purposes of this Ordinance—

- (a) a boat that is under power and under sails shall be deemed to be a power boat;
- (b) a boat shall be deemed to be under way if it is not at anchor, moored, made fast to the shore or a jetty or aground.

(4) A reference in a provision of this Ordinance to a prescribed fee shall be read as a reference to the fee determined under section 5A for the purposes of that provision.



### **Declaration of area as lake**

5. The Minister may, by notice published in the *Gazette*, declare an area to be a lake for the purposes of this Ordinance.

### **Power of Minister to determine fees**

5A. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Ordinance.

## **PART II—ADMINISTRATION**

### **Delegate of the Minister**

6. The Minister may, by writing under his hand, appoint a person to be his delegate for the purposes of this Ordinance.

### **Powers of delegate**

7. The delegate of the Minister has such powers as are conferred upon him by this Ordinance and, in addition, has all the powers of an inspector.

### **Inspectors**

8. (1) The Minister may, by writing under his hand, appoint a person to be an inspector for the purposes of this Ordinance.

(2) The Minister shall issue to an inspector a certificate stating that he is an inspector for the purposes of this Ordinance.

### **Powers of inspectors etc.**

9. (1) For the purposes of this Ordinance, an inspector or a member of the Police Force may—

- (a) where he has reasonable grounds for believing that an offence against this Ordinance is being, or has been, committed, enter and inspect any place, premises, vehicle or boat in a lake area; and
- (b) give such reasonable directions to persons using a lake area and associated works as are in his opinion necessary for the safe and proper use of the lake area and associated works.

(2) Where a notice has been signed by the Minister for the purpose of subsection 21 (1) but the notice has not been published in accordance with that subsection, an inspector or a member of the Police Force may, on production of a copy of the notice, direct a person who is in the lake area of the lake specified in the notice to leave that area.

(3) For the purposes of paragraph (1) (b) or subsection (2), an inspector or member of the Police Force may drive a vehicle or navigate a boat or use, ride upon or cause himself to be carried or drawn on a vehicle or boat within a lake area and, when so doing, shall not be liable for the payment of any fare ordinarily chargeable for the hire or use of the vehicle or boat.

(4) An inspector who enters any place, premises, vehicle or boat in pursuance of this Ordinance is not authorized to remain in or on the place, premises, vehicle or boat if, on request by the occupier or person in charge of the place, premises, vehicle or boat for production of the certificate issued to him under subsection 8 (2), the inspector does not produce the certificate.

### **Obstruction of inspectors**

**10.** A person shall not, without lawful excuse—

- (a) obstruct, hinder or molest an inspector in the exercise of his powers under this Ordinance; or
- (b) refuse or fail to comply with a direction given by an inspector in pursuance of this Ordinance.

Penalty:

- (a) in the case of a natural person—\$1,000 or 6 months imprisonment, or both; and
- (b) in the case of a body corporate—\$5,000.

## **PART III—CONTROL OF A LAKE**

### **Rights in lake waters etc.**

**11. (1)** The right to the use and flow and to the control of the water in a lake and of the waters of all rivers, streams and creeks flowing into a lake is, subject to this Ordinance, vested in the Commonwealth and no right to the use and flow and to the control of the water in a lake or those waters shall be acquired by a person except as provided by or under this Ordinance or any other law in force in the Territory.

**(2)** Subsection (1) does not affect the rights of an owner of land held from the Commonwealth under a lease for a term greater than 20 years, being land through which a river, stream or creek flowing into a lake passes.

### **Unauthorised taking of water**

**12. (1)** A person shall not take water from a lake unless—

- (a) he has been authorized in writing by the Minister so to do; and
- (b) the taking is in accordance with the conditions and requirements, if any, specified in the authority given to him by the Minister.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

**(2)** A person shall not take water from a river, stream or creek flowing into a lake unless—

- (a) the taking of the water is in pursuance of a right acquired by him by or under this Ordinance or any other law in force in the Territory; or
- (b) he has been authorized in writing by the Minister so to do and the taking is in accordance with the conditions and requirements, if any, specified in the authority given to him by the Minister.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

**(3)** The Minister may, by notice published in the *Gazette*, declare that a specified period is, for the purposes of this subsection, a period of emergency and, notwithstanding that a

person has acquired by or under this Ordinance or any other law in force in the Territory the right to take water from a river, stream or creek flowing into a lake, such a person shall not, during the period of emergency, take water from a river, stream or creek flowing into the lake unless—

- (a) the Minister has given to him an authority in writing under this subsection authorizing him to take water from the river, stream or creek; and
- (b) the taking is in accordance with the conditions and requirements, if any, specified in the authority given to him by the Minister.

#### **Alterations in water level etc.**

**13. (1)** For the purposes of the maintenance and preservation of a lake and the maintenance, testing and preservation of associated works, the Minister may authorize—

- (a) a raising or lowering, by any means, of the level of water in a lake;
- (b) stopping the flow, or reducing the rate of flow, of water from a lake; or
- (c) the flow, or an increase in the rate of flow, of water from a lake.

**(2)** The Minister shall cause such action to be taken as is necessary to minimize detriment, inconvenience and damage that may result from the doing of an act authorized under subsection (1).

#### **Compensation for damage**

**14. (1)** Where any land is injuriously affected by the doing of an act authorized by the Minister under subsection 13 (1), the owner of the land—

- (a) shall be paid compensation by the Commonwealth; and
- (b) is not entitled to any other remedy or relief,

in respect of the injurious affection of the land.

**(2)** Compensation referred to in subsection (1) shall be determined by the Minister.

**(3)** This section does not exclude or limit any liability of the Commonwealth or a person apart from this section in respect of a matter in relation to which compensation is not payable under this section.

## **PART IV—USE OF A LAKE**

### *Division 1—General*

#### **Erection of signs**

**15.** The Minister may, by a sign erected, placed or displayed in such manner as he thinks necessary within a lake area—

- (a) specify an area in the vicinity of, and defined in, the sign as—
  - (i) a launching area;
  - (ii) a mooring area;
  - (iii) a beaching area;
  - (iv) an area within which embarkation on to, or disembarkation from, a boat is not permitted;
  - (v) an area within which the embarkation on to, or disembarkation from, a boat other than a boat of a kind specified in the sign is not permitted;

- (vi) an area within which the landing of boats is not permitted; or
  - (vii) an area within which bathing or swimming in, or diving into, the lake is not permitted; or
- (b) convey information or warning to persons using the lake area.

**Prohibitions relating to boats etc.**

**16.** A person shall not—

- (a) place a boat in or take a boat from, or cause or permit a boat to be placed in or taken from, a lake except within an area specified under section 15 as a launching area;
- (b) moor a boat, or cause or permit a boat to be moored, on a lake except within an area specified under section 15, as a mooring area;
- (c) beach, clean or repair a boat, or cause or permit a boat to be beached, cleaned or repaired, within a lake area except within an area specified under section 15, as a beaching area;
- (d) embark or permit another person to embark on to, or disembark or permit another person to disembark from, a boat within an area specified under section 15, as an area within which embarkation on to, or disembarkation from, that boat is not permitted; or
- (e) land a boat, or cause or permit a boat to be landed, on the shore of a lake, or an island in a lake, within an area specified under section 15 as an area within which the landing of boats is not permitted.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

**Prohibitions relating to swimming etc.**

**17.** A person shall not—

- (a) bathe or swim in, or dive into, a part of a lake that is directly underneath a bridge;
- (b) dive into the waters of a lake from a bridge; or
- (c) bathe or swim in, or dive into, a part of a lake that is within an area, specified by a sign erected, placed or displayed under section 15, as an area within which bathing or swimming in, or diving into, a lake is prohibited.

Penalty: \$500.

**Interference with signs**

**18.** A person shall not remove, move, damage, deface, obscure, cover up, or otherwise interfere with a sign erected, placed or displayed within a lake area under section 15 unless he is acting under the authority of the Minister.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

**Approved buoys, wharves and jetties**

**19. (1)** The Minister may, upon application made to him in writing, and upon payment of the prescribed fee approve, subject to such conditions, if any, as he thinks necessary, the anchoring of a buoy in a lake or the erection of a wharf or jetty within a lake area.

**(2)** A person shall not, except with the approval of the Minister and in accordance with the conditions, if any, imposed by the Minister under subsection (1), anchor a buoy in a lake or erect or commence to erect a wharf or jetty within a lake area.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

**(3)** Subject to section 20, a person shall not moor a boat or permit a boat to be moored within an area specified under section 15 as a mooring area except to a buoy, the anchoring of which, or to a wharf or jetty, the erection of which, has been approved by the Minister under subsection (1).

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

### **Restrictions on mooring**

**20. (1)** The Minister may, by a sign erected, placed or displayed on or near a wharf or jetty belonging to the Commonwealth within a lake area, restrict the mooring of boats to the wharf or jetty to boats of a kind specified in the sign.

**(2)** Where a sign is, under subsection (1), erected, placed or displayed on or near a wharf or jetty, a person shall not moor, or cause or permit to be moored, to the wharf or jetty a boat other than a boat of a kind specified in the sign.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

### **Prohibition of use of lake area or parts of lake**

**21. (1)** Subject to subsection (3), the Minister may, by notice published in a newspaper circulating in the Territory, prohibit entry to a lake area.

**(2)** Subject to subsection (3), the Minister may, by notice published in a newspaper circulating in the Territory, declare an area of a lake to be a prohibited area.

**(3)** The Minister shall not prohibit entry to a lake or declare an area of a lake to be a prohibited area unless—

- (a) the condition of the waters of a lake or that area, as the case may be, is such as to constitute a threat to the health of a person entering those waters;
- (b) the prohibition or declaration is reasonably necessary in connexion with the maintenance or preservation of a lake or the maintenance, preservation or testing of an associated work;
- (c) the Commissioner of Police has given to the Minister a certificate in writing stating that the prohibition or declaration, as the case may be, is reasonably necessary to

enable members of the Police Force of the Territory to carry out their duties in a lake or in a lake area;

- (d) by reason of an emergency in a lake or a lake area, it is necessary or desirable to do so; or
- (e) to do so is otherwise in the public interest.

(4) The Minister may cause a boundary of a prohibited area to be defined by such means as he thinks necessary.

(5) A person shall not, while a notice under subsection (1) is in force in respect of a lake area, enter, or remain in that lake area after he has been informed by an inspector or a member of the Police Force that a notice under subsection (1) is in force in respect of that lake area and that entry to that lake area is prohibited.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

(6) A person shall not enter, or remain in, an area of a lake that is a prohibited area after he has been informed by an inspector or a member of the Police Force that that area is a prohibited area and that it is an offence to enter, or remain in, that area.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

(7) It is defence to a prosecution for an offence against subsection (5) or (6) for the defendant to prove that he was in the lake area or the prohibited area, as the case may be, with the consent in writing of the Minister and in accordance with the conditions (if any) subject to which that consent was given.

(8) Subsections (5) and (6) do not apply to—

- (a) a person concerned in, or employed or engaged in or in connexion with, the maintenance or preservation of a lake or the maintenance, preservation or testing of an associated work;
- (b) an Australian public servant or a Territory public servant;
- (ba) a member of the staff of an authority established for a public purpose by or under a Territory Act or a law of the Commonwealth;
- (c) an inspector; or
- (d) a member of the Police Force,

who enters a lake area or a prohibited area in the execution of his duty or for the purposes of his employment or engagement.

### **Closing of parts of a lake for regattas etc.**

22. (1) The Minister may, by notice published in a daily newspaper circulating in the Territory, declare a part of a lake to be a closed area for the period specified in the notice.

(2) The Minister may authorize the conduct of a function, being a regatta, exhibition, sporting contest or other display approved by him, within a closed area by an association of persons, whether incorporated or not.

(3) The Minister may, in an authority under subsection (2), specify the conditions, if any, to which the authority is subject.

(4) An authority under subsection (2) applies to the members of the association of persons to whom it is given and to all other persons to whom it is expressed to apply.

### **Access to leased or occupied land**

**22A.** The Minister shall not—

- (a) in a notice under section 21, prohibit entry to or declare to be a prohibited area; or
- (b) in a notice under section 22, declare to be a closed area,

part of a lake area that provides access to land held under lease from the Commonwealth or occupied with the authority of the Commonwealth or by virtue of a law in force in the Territory.

### **Conduct of regattas etc.**

**23. (1)** Where an association of persons is, under section 22, authorized to conduct a function in a closed area, a person other than—

- (a) a member of the association; or
- (b) a person to whom the authority is expressed to apply;

shall not enter or be in the closed area.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

**(2)** Subsection (1) does not apply to—

- (a) a person concerned in, or employed or engaged in or in connexion with, the maintenance or preservation of a lake or the maintenance, testing or preservation of an associated work;
- (b) an Australian public servant or a Territory public servant;
- (ba) a member of the staff of an authority established for a public purpose by or under a Territory Act or a law of the Commonwealth;
- (c) an inspector; or
- (d) a member of the Police Force,

who enters or is in a closed area in the execution of his duty or the terms of his employment or engagement.

### **Anchoring of boats**

**24. (1)** A person shall not anchor a boat on a lake between the hours of sunset and sunrise.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant satisfies the court that the boat was anchored for the purpose of fishing by means of rod and line held in the hand and that he or another person was engaged in fishing by that means for the greater part of the time during which the boat was anchored.

### **Mooring of boats**

**25. (1)** The Minister may, on payment of the prescribed fee, grant to a person a permit to moor a boat on a lake.

(1A) A permit issued under this section remains in force for such period, not exceeding one year, as is specified in the permit and may be renewed on payment of the prescribed fee.

(2) A person shall not moor a boat on a lake unless—

- (a) the boat is moored within an area specified under section 15 as a mooring area; and
- (b) the person is the holder of a permit issued under this section.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

### **Use of power boats**

**26. (1)** The Minister may, on such conditions, if any, as he thinks fit, authorize, by notice in writing, the use of a power boat in or on a lake—

- (b) by a sports club in connexion with the training of persons for or the conduct of a competition in an aquatic sport; or
- (c) by such other persons for such purposes as he approves.

(2) At any time after an authority is given under subsection (1), the Minister may, by notice in writing to the sports club or approved person, as the case may be—

- (a) impose further conditions on the authority; or
- (b) vary or revoke a condition on which the authority was given.

(3) Where a sports club or approved person, to whom an authority under subsection (1) is granted—

- (a) fails to comply with a provision of this Ordinance; or
- (b) fails to comply with the conditions (if any) subject to which the authority is granted,

the Minister may, by notice in writing to the sports club or approved person, as the case may be, revoke the authority.

(4) A notice under this section may be given—

- (a) in the case of an approved person—
  - (i) by delivering it to him personally; or
  - (ii) by sending it by post addressed to him at his last-known place of business or residence; or
- (b) in the case of a sports club—
  - (i) by delivering it to a member of the governing body of the club personally; or



- (ii) by sending it by post addressed to the governing body of the club at the last-known place of operations of the club.

### **Restrictions on use of power boats**

**27. (1)** Subject to this section, a person shall not be in charge or control of a power boat on a lake.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 6 months, or both; and
- (b) in the case of a body corporate—\$5,000.

**(1A)** Subject to this section, a person shall not be in a power boat on a lake.

Penalty: \$1,000.

**(2)** It is a defence to a prosecution for an offence against subsection (1) or (1A) if the defendant satisfies the court that, at the time of the offence—

- (a) the use of the power boat in or on the lake was authorized under section 26; and
- (b) the power boat was being used for a purpose for which, and in accordance with the conditions, if any, on which, its use in or on the lake was so authorized.

**(3)** Subsections (1) and (1A) do not apply to—

- (a) a person concerned in, or employed or engaged in or in connexion with, the maintenance or preservation of the lake or the maintenance, testing or preservation of an associated work;
- (b) an Australian public servant or a Territory public servant;
- (ba) a member of the staff of an authority established for a public purpose by or under a Territory Act or a law of the Commonwealth;
- (c) an inspector; or
- (d) a member of the Police Force,

who, in the execution of his duty or the terms of his employment or engagement, is in or uses or causes or permits to be or be used in or on the lake a power boat that is the property of the Commonwealth.

### **Restriction on water-skiing**

**28. (1)** The Minister may, upon payment of the prescribed fee and subject to such conditions, if any, as he thinks fit, grant to a person a permit to take part in water-skiing on a lake.

**(2)** A person shall not take part in water-skiing on a lake, unless—

- (a) he is the holder of a permit under subsection (1); and
- (b) he complies with the conditions, if any, subject to which that permit was granted.

Penalty: \$40.

**(3)** For the purposes of this section—

- (a) “water-skiing” includes aquaplaning; and

- (b) a person who is being towed, by any means, whether or not for sporting purposes, in such circumstances that the person is being towed in a manner similar to the manner in which a person is towed in water-skiing shall be deemed to be taking part in water-skiing.

**Restriction on use of hovercraft**

**29. (1)** The Minister may, upon payment of the prescribed fee and subject to such conditions, if any, as he thinks fit, grant to a person a permit to use a hovercraft within or above a lake area.

**(2)** A person shall not use, or cause or permit to be used, a hovercraft within or above a lake area, unless—

- (a) he is the holder of a permit under subsection (1) with respect to that lake area; and
- (b) he complies with the conditions, if any, subject to which that permit was granted.

Penalty:

- (a) in the case of a natural person—\$1,000 or 6 months imprisonment, or both; and
- (b) in the case of a body corporate—\$5,000.

**Removal of vehicles and boats from a lake etc.**

**30. (1)** Where, in the opinion of an inspector or a member of the Police Force, a vehicle or boat in a lake area—

- (a) is obstructing or is likely to obstruct the free passage of any person, vehicle or boat in the lake area; or
- (b) should, in the interests of safety or of the public, be moved,

the inspector or member may direct the owner or person in charge of the vehicle or boat to move it to another place in, or to remove it from, the lake area.

**(2)** Where an inspector or member of the Police Force—

- (a) is unable to give a direction under subsection (1) by reason of the absence of the owner or person in charge of the vehicle or boat; or
- (b) gives a direction under subsection (1) and the owner or person in charge of the vehicle or boat refuses or fails to comply with the direction,

the inspector or member may, with such assistance, if any, and by such means, as he thinks necessary, move the vehicle or boat to another place in, or remove it from, the lake area.

**(3)** Where an inspector or member of the Police Force, in the exercise of his powers under subsection (2), moves or removes a vehicle or boat, the Commonwealth may recover the cost of the moving or removing, as the case may be, of the vehicle or boat as a debt in a court of competent jurisdiction.

**(4)** An inspector or member of the Police Force is not liable for any damage that he may cause to a vehicle or boat in the proper exercise of his powers under this section.

**Houseboats prohibited**

**31.** A person shall not use a boat as a houseboat or place of living within a lake area.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

### **Camping etc.**

**32.** A person shall not camp, or permit a caravan to stand, within a lake area between the hours of sunset and sunrise.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

### **Agreements for use of lake areas**

**33.** The Minister may, on behalf of the Commonwealth, enter into agreements with persons with respect to the undertaking of commercial activities by those persons within a lake area.

### **Selling or hiring of goods etc.**

**34.** A person shall not undertake a commercial activity within a lake area except in accordance with—

- (a) an agreement referred to in section 33; or
- (b) an agreement referred to in section 33 of the *Lakes Ordinance 1976*, as in force at any time before Self-Government Day, being an agreement that was in force immediately before Self-Government Day.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

### **Power to charge for admission**

**35. (1)** The Minister may, on any day or portion of a day, authorize the delegate of the Minister to make a charge for admission to a lake area or a part of a lake area and, when he is so authorized, the delegate of the Minister may exclude from the lake area or the part of the lake area, as the case may be, a person who does not pay the admission charge.

**(2)** The Minister may, by instrument in writing, grant to a person the exclusive right to occupy and use a part of a lake area specified in the instrument for the period, for the purpose and on the conditions (if any) specified in the instrument.

**(3)** Where the Minister, under subsection (2), grants to a person an exclusive right of occupation and use of a part of a lake area, the person may make a charge, not exceeding an amount approved by the Minister, for admission to that part of the lake area during the period in respect of which that right is granted and may exclude any other person who does not pay the admission charge.

## ***Division 2—Provisions Relating to Particular Lakes***

### **Lake Burley Griffin**

**36. (1)** A person shall not bathe or swim in, or dive into, that part of Lake Burley Griffin between Commonwealth Avenue Bridge and King's Avenue Bridge.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

(2) Subsection (1) does not apply to a person to whom an authority in force under subsection 22 (2) applies.

## **PART V—RULES FOR PREVENTING COLLISIONS ON A LAKE**

### *Division 1—Lighting Rules*

#### **Observance of lighting rules**

**37.** Where a boat that is under way or anchored on a lake between the hours of sunset and sunrise—

- (a) does not carry a light required by this Division to be carried on that boat; or
- (b) does not carry a light required by this Division to be carried on that boat in the position in which that light is required by this Division to be carried,

the person in charge of the boat or, if there is no person in charge, each person on the boat or, if there is no person on the boat, the owner of the boat is guilty of an offence punishable on conviction by a fine not exceeding \$40.

#### **Lights to be carried on large power boats**

**38. (1)** This section applies to and in relation to a power boat that is—

- (a) 5 or more metres long; and
- (b) under way, or anchored, on a lake between the hours of sunset and sunrise.

(2) A boat to which this section applies shall show, in the forepart of the boat where it can best be seen, not less than 2 metres above the gunwale, a bright white light that shows an unbroken light, visible at a distance of not less than 5 kilometres, over an arc of the horizon of 20 points of the compass, or 225 degrees, from right ahead to 2 points of the compass, or 22½ degrees, abaft the beam on each side of the boat.

(3) A boat to which this section applies shall show, on the starboard side, a green light that shows an unbroken light, visible at a distance of not less than 1.50 kilometres, over an arc of the horizon of 10 points of the compass, or 112½ degrees, from right ahead to 2 points of the compass, or 22½ degrees, abaft the beam on the starboard side.

(4) A boat to which this section applies shall show, on the port side, a red light that shows an unbroken light, visible at a distance of not less than 1.50 kilometres, over an arc of the horizon of 10 points of the compass, or 112½ degrees, from right ahead to 2 points of the compass, or 22½ degrees, abaft the beam on the port side.

(5) A boat to which this section applies shall show, at the stern of the boat, as nearly as practicable at the same level as the side lights referred to in subsections (3) and (4), or the combined lantern referred to in subsection (6), as the case may be, a white light that shows an unbroken light, visible at a distance of not less than 3 kilometres, over an arc of the horizon of 12 points of the compass, or 135 degrees, from right aft to 6 points of the compass, or 67½ degrees, from right aft on each side of the boat.

(6) It is sufficient compliance with subsections (3) and (4) if the green light and the red light specified in those subsections are shown together in a combined lantern not less than 0.50 metre below the bright white light specified in subsection (2).

#### **Light to be carried by small power boat**

**39.** A power boat that is—

- (a) less than 5 metres long; and
- (b) under way, or anchored, on a lake between the hours of sunset and sunrise;

shall show a white light visible at a distance of 1.50 kilometres.

### **Lights to be carried by sailing vessels**

**39A.** Subsections 38 (3), (4), (5) and (6) apply in relation to a sailing vessel that is under way, or anchored, on a lake between the hours of sunset and sunrise as if that vessel were a boat to which section 38 applies.

### **Emergency lights**

**40.** Where a boat that is under way or anchored on a lake between the hours of sunset and sunrise—

- (a) does not carry an electric torch or lighted lantern ready for immediate use; or
- (b) on the failure of a light required by this Division to be carried on the boat, does not show, in place of that light, the light of an electric torch or lantern during the whole of the period for which the boat continues under way or anchored on the lake between the hours of sunset and sunrise,

the person in charge of the boat or, if there is no person in charge, the owner of the boat is guilty of an offence punishable on conviction by a fine not exceeding:

- (c) in the case of a natural person—\$500; and
- (d) in the case of a body corporate—\$2,500.

## *Division 2—Rules of the Water*

### **Sailing and steering rules generally**

**41. (1)** Where two sailing boats are approaching one another, so as to involve risk of collision—

- (a) a boat that is close-hauled on the port tack shall keep out of the way of a boat that is close-hauled on the starboard tack;
- (b) when both boats are running free, with the wind on different sides, the boat that has the wind on the port side shall keep out of the way of the other boat; and
- (c) when both boats are running free, with the wind on the same side, the boat that is to windward shall keep out of the way of the boat that is to leeward.

**(2)** Where two power boats are approaching one another end on, so as to involve risk of collision, each boat shall alter course to starboard so that each boat shall pass on the port side of the other boat.

**(3)** Where two power boats are crossing, so as to involve risk of collision, the boat that has the other boat on its own starboard side shall keep out of the way of that other boat.

**(4)** Subject to section 47, where a power boat and a sailing boat are approaching one another, so as to involve risk of collision, the power boat shall keep out of the way of the sailing boat.

**(5)** Subject to section 47, where a boat propelled by oars and a sailing boat are approaching one another, so as to involve risk of collision, the boat propelled by oars shall keep out of the way of the sailing boat.

### **Course and speed to be kept**

42. Where one of two boats is, by a provision of this Division, to keep out of the way of the other boat, that other boat shall keep its course and speed until the boats are clear of one another, unless to do so would involve risk of collision.

### **Restriction on crossing ahead**

43. A boat that is required by a provision of this Division to keep out of the way of another boat shall, if practicable, keep from crossing ahead of the other boat.

### **Power boats to slacken speed**

44. A power boat that is required by a provision of this Division to keep out of the way of another boat shall, on approaching that other boat, if necessary to avoid collision, slow down, stop or reverse.

### **Overtaking boats**

45. (1) A boat that is overtaking another boat shall keep out of the way of the other boat.

(2) A boat coming up with another boat from a direction more than 2 points of the compass, or  $22\frac{1}{2}$  degrees, abaft that other boat's beam shall be deemed to be an overtaking boat.

### **Use of channels**

46. Where the limits of a channel or fairway from one part of a lake to another part of the lake are defined by bearings, buoys or other means, a boat shall not go from that first-mentioned part of the lake to that other part of the lake except within the limits of the channel or fairway as so defined.

### **Racing rules**

47. A boat on a lake taking part in a boat race is not required to observe, in relation only to another boat taking part in the race, a provision of this Division that conflicts with a rule relating to the running of the race approved by the person or association of persons controlling the race.

## ***Division 3—General***

### **Navigating boat in dangerous manner etc.**

48. (1) A person shall not navigate or take part in the navigation of a boat on a lake in a negligent or reckless manner or at a speed or in a manner dangerous to persons using the lake.

Penalty:

- (a) in the case of a natural person—\$1,000 or 6 months imprisonment, or both; and
- (b) in the case of a body corporate—\$5,000.

(2) In considering whether an offence has been committed under this section, the court shall have regard to all the circumstances of the case, including conditions affecting visibility on the lake, the limitations of the boats involved and the number of boats that was or might reasonably have been expected to have been on the lake at that time.

### **Careless navigation**

49. A person shall not navigate or take part in the navigation of a boat on a lake without due care and attention or without reasonable consideration for other persons using the lake.

Penalty:

- (a) in the case of a natural person—\$500; and
- (b) in the case of a body corporate—\$2,500.

### **Navigation of boat while intoxicated**

**50. (1)** A person shall not navigate or take part in the navigation of a boat on a lake while he is under the influence of intoxicating liquor.

Penalty: \$500.

**(2)** A person arrested for an offence under this section shall be entitled, upon request made by him or on his behalf, to be examined by a legally qualified medical practitioner and, where any such request is made, the person making the arrest shall afford all reasonable facilities for the holding of the examination.

## **PART VI—MISCELLANEOUS**

### **Appeals**

**51. (1)** Application may be made to the Tribunal for a review of a decision of the Minister—

- (a) making a determination under subsection 14 (2);
- (b) refusing to approve the anchoring of a buoy or the erection of a wharf or jetty under subsection 19 (1);
- (c) imposing conditions on an approval under subsection 19 (1);
- (d) refusing to authorise or approve the conduct of a function under subsection 22 (2);
- (e) imposing conditions on an authority under subsection 22 (2);
- (f) refusing to grant or renew a permit to moor a boat under section 25;
- (g) refusing to authorise the use of a power boat under subsection 26 (1);
- (h) imposing conditions on an authority under subsection 26 (1);
- (i) imposing further conditions, or varying or revoking a condition imposed, on an authority under subsection 26 (2);
- (j) revoking an authority under subsection 26 (3);
- (k) refusing to grant a permit to use a hovercraft under subsection 29 (1); or
- (l) imposing conditions on the grant of a permit under subsection 29 (1).

**(2)** Where the Minister makes a decision referred to in subsection (1), the Minister shall, within 28 days, cause notice in writing of the decision to be given to the person whose interests are affected by the decision.

**(3)** A notice under subsection (2) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975* of the Commonwealth, application may be made to the Commonwealth Administrative Appeals Tribunal for review of the decision to which the notice relates; and

- (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

(4) The validity of a decision referred to in subsection (1) shall not be taken to be affected by a failure to comply with subsection (3).

### **Conduct by directors, servants or agents**

**51A. (1)** Where, in proceedings for an offence against this Ordinance in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Ordinance, to have been engaged in also by the body corporate.

(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

### **Evidence**

**52.** Unless the contrary is proved, evidence that a sign referred to in section 15 was erected, placed or displayed within a lake area or on Scrivener Dam is evidence that it was erected, placed or displayed, as the case may be, by or by the authority of the Minister.

### **Offence due to accident etc.**

**53.** A person is not liable to be convicted of an offence against or a contravention of a provision of this Ordinance if he satisfies the court—

- (a) that the offence or contravention could not have been avoided by any reasonable efforts on his part; or
- (b) that the action he took was reasonable in the circumstances and intended to evade a dangerous situation that had arisen through no fault or negligence on his part.

### **Regulations**

**54.** The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular for prescribing matters for or in relation to—

- (a) the equipment to be carried on boats using a lake;
- (b) the qualifications of persons navigating power boats on a lake;



- (c) the forms to be used in respect of any matter arising under this Ordinance; and
- (d) the imposition of penalties not exceeding \$40 for breaches of the Regulations.

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## SCHEDULES

### SCHEDULE 1

Section 3

*Lake Burley Griffin Ordinance 1965*  
*Lake Burley Griffin Ordinance 1968*  
*Lake Burley Griffin Ordinance 1975*  
*Lake Burley Griffin Ordinance 1976*  
*Lake Ginninderra (Temporary Control) Ordinance 1973*

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### SCHEDULE 2

Section 4

All that land in the Australian Capital Territory containing an area of 191.2 hectares more or less but excluding the body of water known as Lake Ginninderra: commencing at the easternmost corner of Block 1 Section 65 Division of Bruce District of Belconnen shown in plan catalogued in the Office of the Registrar of Titles Canberra Deposited Plan 3584 being a point on the western side of Cameron Avenue and bounded thence on the south west by the north eastern boundary of that Block 1 bearing 300 degrees 18 minutes 40 metres thence on the south by the northern boundary of that Block 1 and a line bearing in all 270 degrees 249.67 metres thence on the east by a line bearing 180 degrees 81 metres thence on the north by a line bearing 90 degrees 4 metres thence on the east by a line and part of the western boundary of Block 2 of Section 65 as shown in plan catalogued in the Office of the Registrar of Titles Canberra Deposited Plan 3810 bearing in all 180 degrees 19.255 metres to the intersection of the western boundary of that Block 2 and the easterly prolongation of a line parallel to and 5 metres southerly from a stone retaining wall thence generally on the southwest by lines approximately parallel to and distant 5 metres generally southwesterly from that stone retaining wall bearing successively 270 degrees 6 minutes 4 seconds 53.9 metres 180 degrees 17 minutes 4 seconds 7.2 metres 269 degrees 12 minutes 4 seconds 11.65 metres 309 degrees 34 seconds 60.87 metres 350 degrees 15 minutes 34 seconds 89.34 metres 90 degrees 17 minutes 4 seconds 7.00 metres 350 degrees 13 minutes 4 seconds 14.32 metres 335.82 metres of the arc of a circle of radius 305.9 metres the chord of which lies to the southwest and bears 318 degrees 48 minutes 12 seconds 319.21 metres 287 degrees 21 minutes 12 seconds 7.48 metres 199 degrees 29 minutes 54 seconds 24.85 metres 269 degrees 5 minutes 24 seconds 77.91 metres 2 degrees 35 minutes 4 seconds 44.73 metres 269 degrees 35 minutes 4 seconds 78.36 metres and 181 degrees 25 minutes 44 seconds 55.25 metres to the intersection of that line with the northern side of Emu Bank thence on the south by that side of Emu Bank bearing 266 degrees 180.604 metres thence generally on the south west by a line being 20.99 metres of an arc of a circle of radius 15 metres the chord of which lies to the north east and bears 306 degrees 5 minutes 19.315 metres to the north eastern side of Cohen Drive thence by part of that side of Cohen Drive bearing 346 degrees 10 minutes 351.05 metres thence by lines bearing successively 64 degrees 20 minutes 51.47 metres 352 degrees 42 minutes 54.52 metres 358 degrees 6 minutes 73.24 metres 16 degrees 33 minutes 30 seconds 103.31 metres 348 degrees 8 minutes 124.05 metres 279 degrees 35 minutes 46.82 metres 232 degrees 28 minutes 78.13 metres and 264 degrees 23 minutes 58.42 metres to a point on the north eastern side of Cohen Drive aforesaid thence on the south west by that side of Cohen Drive being 342.26 metres of the arc of a circle of radius 705.38 metres the chord of which lies to the south west and bears 311 degrees 54 minutes 2 seconds 338.92 metres and a line bearing 298 degrees 21.375 metres thence on the south west by 23.86 metres of an arc of a circle of radius 15 metres the chord of which lies to the north east and bears 343 degrees 33 minutes 55 seconds 21.42 metres to a point on the south eastern side of Coulter Drive thence on the west by that side of Coulter Drive being lines bearing successively 22.63 metres of an arc of a circle of radius of 1174.485 metres the chord of which lies to the south east and bears 29 degrees 40 minutes 57 seconds 22.63 metres 30 degrees 14 minutes 5 seconds 144.01 metres 312.56 metres of an arc of a circle of radius 875.49 metres the chord of which lies to the west and bears 20 degrees 26 seconds 310.900 metres 9 degrees 46 minutes 47 seconds 133.35 metres and 59.17 metres of an arc of a circle of radius 1165.985 metres the chord of which lies to the east and bears 11 degrees 14 minutes 1 second 59.17 metres thence on the north west by a line bearing 57 degrees 1 minute 40 seconds 21.59 metres to a point on the southern side of Ginninderra Drive thence on the west by a line bearing 16 degrees 30 minutes 147.675 metres thence on the north and north east by lines bearing successively 92 degrees 7 minutes 20 seconds 517.3 metres and 129 degrees 25 minutes 141.8 metres to a point on the western side of William Webb Drive and thence on the east by parts of that side of William Webb Drive and its southerly prolongation being lines bearing successively 13.105 metres of an arc of a circle of radius 189.33 metres the chord of which lies to the west and bears 188 degrees 58 minutes 13.1 metres and 190 degrees 57 minutes 111.08 metres to a point on the southern side of Ginninderra Drive aforesaid thence on the north by that side of Ginninderra Drive bearing 110 degrees 24 minutes 30 seconds 79.5 metres thence generally on the east by lines bearing successively 222 degrees 45 minutes 30 seconds 104.8 metres 135 degrees 1 minute 42.42 metres 211 degrees 41 minutes 30 seconds 78.88 metres 140 degrees 52 minutes 30 seconds 138.06 metres 251 degrees 31 minutes 50 seconds 142.88 metres 180 degrees 25.17 metres 123 degrees 49 minutes 30 seconds 111.07 metres 208 degrees 30 minutes 30 seconds 77.6 metres 178 degrees 18 minutes 30 seconds 100.05 metres 112 degrees 6 minutes 30.83 metres 174 degrees 18 minutes 84.92 metres 111 degrees 59 minutes 70.42 metres 182 degrees 21 minutes 40.195 metres 179 degrees 39 minutes 35.475 metres 262 degrees 56 minutes 30

## SCHEDULE 2—continued

seconds 48.295 metres 212 degrees 7 minutes 30 seconds 47.78 metres 155 degrees 28 minutes 40 seconds 161.88 metres 94 degrees 39 minutes 47.65 metres and 93 degrees 4 minutes 35.94 metres thence generally on the west by lines bearing successively 44 degrees 15 minutes 30 seconds 100.92 metres 10 degrees 41.99 metres 333 degrees 39 minutes 10 seconds 108.63 metres 21 degrees 17 minutes 40 seconds 176.8 metres 52 degrees 39 minutes 81.09 metres 152 degrees 28 minutes 30 seconds 109.78 metres and 62 degrees 48 minutes 190.12 metres to a point on the north eastern side of Ginninderra Drive aforesaid thence on the south west by parts of the north eastern side of Ginninderra Drive being 66.05 metres of an arc of a circle of 692.4 metres radius the chord of which lies to the north east and bears 329 degrees 23 minutes 30 seconds 66.03 metres and a line bearing 332 degrees 7 minutes 30 seconds 60.03 metres thence generally on the west by lines bearing successively 61 degrees 50 minutes 20 seconds 150.65 metres 2 degrees 56 minutes 47.11 metres and 309 degrees 26 minutes 122.03 metres to a point on the south eastern side of William Slim Drive thence on the north west by parts of that side of William Slim Drive being lines bearing successively 60 degrees 3 minutes 20 seconds 132.15 metres 43 degrees 11 minutes 30 seconds 145.82 metres 32 degrees 19 minutes 30 seconds 145.82 metres 11 degrees 27 minutes 66.63 metres 22 degrees 40 seconds 138.25 metres 26 degrees 17 minutes 80.52 metres 24 degrees 58 minutes 65.96 metres 22 degrees 52 minutes 47.92 metres and 37 degrees 28 minutes 40 seconds 24.94 metres to a point on the boundary of land formerly known as Block 190 Canberra City District shown on plan held by the Australian Survey Office MS 756 bearing 176 degrees 10 minutes 1.79 metres from the westernmost corner of that land thence on the north east by south western boundaries of that Block 190 176 degrees 10 minutes 392.76 metres and 131 degrees 30 minutes 20 seconds 255.13 metres thence on the east by lines bearing successively 206 degrees 15 minutes 93.92 metres 153 degrees 36 minutes 160.19 metres 246 degrees 12 minutes 129.21 metres 222 degrees 10 minutes 70.07 metres 312 degrees 27 minutes 64.56 metres 241 degrees 9 minutes 30 seconds 81.32 metres 243 degrees 47 minutes 30 seconds 91.41 metres 197 degrees 2 minutes 286.27 metres and 232 degrees 31 minutes 70.12 metres to a point on the south western side of Ginninderra Drive aforesaid and bounded thence generally on the east by lines bearing successively 229 degrees 46 minutes 300.23 metres 238 degrees 28 minutes 40 seconds 225.42 metres 180 degrees 151.42 metres 114 degrees 30 minutes 83 metres 90 degrees 103 metres 108 degrees 102 metres 114 degrees 48 minutes 84.78 metres 176 degrees 34 minutes 57 seconds 26.195 metres to a point on the western side of Cameron Avenue aforesaid thence by part of that side of Cameron Avenue bearing 196 degrees 33 minutes 2 seconds 303.11 metres to the point of commencement.

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## NOTES

1. This reprint sets out the provisions of the *Lakes Ordinance 1976*, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The provisions of the *Lakes Ordinance 1976* as shown in this reprint comprises Ordinance No. 65, 1976 amended as indicated in the Tables below.

The *Lakes Ordinance 1976* was amended by the *Commonwealth Functions (Statutes Review) Act 1981* (Commonwealth Act No. 74, 1981) as amended. The amendments are incorporated in this reprint.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

### Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
Lakes Ordinance 1976	65, 1976	13 Dec 1976	15 Dec 1976 (see <i>Gazette</i> 1976, No. S228)	—
Lakes Ordinance 1978 (Amendment)	4, 1978	2 Feb 1978	2 Feb 1978	—
Lakes Ordinance 1983 (Amendment)	31, 1983	29 Sept 1983	1 Oct 1983	—
Lakes Ordinance 1985 (Amendment)	15, 1985	4 Apr 1985	4 Apr 1985	—
Lakes Ordinance 1987 (Amendment)	49, 1987	16 Sept 1987	16 Sept 1987	S. 12
Lakes Ordinance 1988 (Amendment)	67, 1988	21 Sept 1988	21 Sept 1988	—
National Land Ordinance 1989	39, 1989	10 May 1989	11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	S. 5 (5)
Lakes Ordinance 1992 (Amendment)	1, 1992	11 Mar 1992	11 Mar 1992	—

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 4 .....	am. No. 4, 1978; C'wealth Act No. 74, 1981; No. 31, 1983; No. 49, 1987
S. 5A .....	ad. No. 31, 1983
Ss. 6, 7 .....	rs. C'wealth Act No. 74, 1981
S. 9 .....	am. No. 4, 1978
S. 10 .....	am. No. 49, 1987
S. 12 .....	am. No. 49, 1987
Ss. 16-18 .....	am. No. 49, 1987
S. 20 .....	am. No. 49, 1987
S. 21 .....	am. No. 49, 1987; No. 39, 1989
S. 22 .....	am. No. 1, 1992
S. 22A .....	ad. No. 4, 1978
S. 23 .....	am. No. 49, 1987; No. 1, 1992
S. 24 .....	am. No. 49, 1987
S. 25 .....	am. No. 4, 1978; No. 49, 1987
S. 26 .....	am. No. 49, 1987
S. 27 .....	am. No. 49, 1987; No. 67, 1988
S. 28 .....	am. No. 31, 1983
S. 29 .....	am. No. 31, 1983; No. 49, 1987

**NOTES—continued**

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Ss. 31, 32 .....	am. No. 49, 1987
S. 33 .....	rep. No. 15, 1985
	ad. No. 49, 1987
S. 34 .....	am. No. 31, 1983
	rs. No. 49, 1987
	am. No. 39, 1989
S. 35 .....	am. No. 31, 1983; C'wealth Act No. 74, 1981
S. 36 .....	am. No. 49, 1987; No. 1, 1992
S. 38 .....	am. No. 1, 1992
S. 39 .....	rs. No. 1, 1992
S. 39A .....	ad. No. 1, 1992
S. 40 .....	am. No. 49, 1987
Ss. 48-50 .....	am. No. 49, 1987
S. 51 .....	am. No. 49, 1987; No. 1, 1992
S. 51A .....	ad. No. 49, 1987
S. 54 .....	am. No. 31, 1983
Schedule 1 .....	am. No. 4, 1978

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## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **LEASES ORDINANCE 1918<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

#### **TABLE OF PROVISIONS**

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1.	Short title
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An Ordinance relating to the Leasing of Commonwealth Lands in the Territory

#### **Short title**

1. This Ordinance may be cited as the *Leases Ordinance 1918*.<sup>2</sup>

### **Minister may lease lands**

2. The Minister or a person thereto authorized in writing by the Minister may, in the name of the Commonwealth, grant leases of any Crown land in the Territory and any land acquired therein under the *Lands Acquisition Act 1906-1916* or that Act as amended or under the *Lands Acquisition Act 1955* or that Act as amended.

### **Grant of leases**

3. Subject to this Ordinance and the Regulations leases granted under this Ordinance shall be for such periods and subject to such covenants and conditions as to rent and otherwise, as the Minister determines.

### **Minister may vary rent**

3AA. (1) Any lease may, without prejudice to the period for which the lease is granted or to any covenant or condition of the lease, be granted subject to the condition or agreement that the rate at which the rent shall be payable for any period of the lease may be determined by the Minister or otherwise, and the rate may be determined accordingly, and, subject to any variation made in pursuance of section 3AAA, the rate as so determined shall be the rate at which the lessee shall pay rent for that period:

Provided that if notice of the determination is not, in pursuance of the next succeeding subsection, delivered to or served on the lessee before the commencement of the period in respect of which the rate is determined, the rate at which the lessee shall pay rent for that period up to the date on which the notice is delivered to or served on him, shall be the rate at which the rent for the lease was payable immediately prior to the commencement of the period.

(2) The Minister shall cause to be delivered to, or served by post on, the lessee, notice in writing of any determination made under or by virtue of the last preceding subsection.

### **Appeals by lessees**

3AAA. (1) Where the Minister offers in writing to a lessee under this Ordinance the grant of a lease upon the expiration of, or in substitution for, his existing lease, the lessee may, within one month after his receipt of the offer—

- (a) accept the offer; or
- (b) apply in writing to the Minister to vary the rent reserved by, or any term or condition of, the lease so offered.

(2) A person who makes an application to the Minister under paragraph (1) (b) shall specify in his application—

- (a) the variation that he considers should be made; and
- (b) the grounds on which he considers that the variation should be made.

(3) Where the Minister, in accordance with the conditions of any lease under this Ordinance, determines the rent payable under that lease, the lessee, if dissatisfied with the determination, may, within one month after his receipt of notice of the determination, apply in writing to the Minister to vary the rent as so determined.

(4) A person who makes an application to the Minister under subsection (3) shall specify in his application—

- (a) the variation that he considers should be made in the rent determined to be payable;

and

(b) the grounds on which he considers that the variation should be made.

(5) The Minister shall consider every application made under subsection (1) or (3) and shall, by notice in writing, delivered to, or served by post on, the lessee, either—

(a) affirm the offer or determination in respect of which the application was made; or

(b) vary the offer or determination to such extent or in such manner as is specified in the notice.

(6) The Minister shall not, under subsection (5)—

(a) affirm an offer or determination where the rent reserved by the lease offered, or the rent determined, is higher than a fair rent for the relevant property; or

(b) vary an offer or determination so that the rent reserved by the lease offered, or the rent determined, is higher than a fair rent for the relevant property.

(7) Where a notice referred to in subsection (5) is delivered to or served on a lessee, the lessee may—

(a) where the decision of the Minister relates to an offer referred to in subsection (1)—

(i) if the original offer was not varied by the decision—within one month after the notice is delivered to or served on him, accept the offer;

(ii) if that offer was varied by the decision—within one month after the notice is delivered to or served on him, accept the offer as so varied; or

(iii) make application to the Administrative Appeals Tribunal for review of the decision of the Minister; or

(b) where the decision of the Minister relates to a determination referred to in subsection (3)—make application to the Administrative Appeals Tribunal for review of the decision of the Minister.

(8) A notice under subsection (5) shall—

(a) where the notice relates to an offer referred to in subsection (1), contain a statement of the provisions of paragraph (7) (a); or

(b) where the notice relates to a determination referred to in subsection (3), contain a statement of the provisions of paragraph 7 (b).

(9) The failure of a notice under subsection (5) to comply with the requirements of subsection (8) shall not be taken to affect the validity of the notice.

### **Fair rent**

**3AAB.** A reference in subsection 3AAA (6) to a fair rent shall be read as a reference to—

(a) in the case of a property in respect of which the grant of a lease has been offered that is the subject of an application under subsection 3AAA (1)—a rent that it would be reasonable to reserve in respect of the property having regard to—

(i) the physical characteristics of the property;

(ii) the location of the property;

(iii) the purposes for which the property may be used under the proposed lease;

- (iv) the period for which the proposed lease would be granted;
  - (v) the rent reserved by leases of similar properties in similar locations; and
  - (vi) any other factors pertaining to the property or the proposed lease to which it would be reasonable to have regard; and
- (b) in the case of a property subject to a lease under which the Minister has made a determination referred to in subsection 3AAA (3)—
- (i) a rent that it would be reasonable to reserve in respect of the property having regard to—
    - (A) the physical characteristics of the property;
    - (B) the location of the property;
    - (C) the purposes for which the property may be used under the lease;
    - (D) the period for which the lease was granted;
    - (E) the unexpired portion of the period for which the lease was granted;
    - (F) the rent reserved by leases of similar properties in similar locations; and
    - (G) any other factors pertaining to the property or the lease to which it would be reasonable to have regard; or
  - (ii) the minimum rent that may be fixed under the conditions, if any, of the lease that prescribe the minimum rent payable under the lease,
- whichever is the greater.

### **Reduction of rent and relief from conditions**

**3AB. (1)** The Minister may, in respect of any period, whether commencing before, at or after the commencement of this section, or whether commencing before, at or after the giving of the approval, approve of—

- (a) the reduction of the rent payable under a lease or a tenancy, or of the amount payable in respect of any occupation of land; or
- (b) the grant of relief, to a lessee, tenant or occupier of land, from compliance, wholly or in part, with any covenant or condition to which his lease, tenancy or occupation is subject,

and thereupon the liability and obligation of the lessee, tenant or occupier under the lease or tenancy or in respect of his occupation shall, in respect of that period, be discharged to the extent of the reduction or grant of relief approved.

(2) Any grant of relief approved in pursuance of the last preceding subsection may be absolute or subject to such conditions as the Minister thinks fit.

(3) Except in cases to which the next succeeding section applies, the Minister shall send by post or deliver or cause to be sent by post or delivered to the lessee, tenant or occupier, a memorandum specifying the reduction or the grant of relief approved by the Minister.

### **Discharge from liabilities under prior lease**

**3AC. (1)** Where the Minister grants a lease he may, by the grant, and either absolutely or subject to such conditions as he thinks fit, fully discharge the lessee, from all liabilities and obligations which the lessee may have incurred in respect of any prior occupation of the leased



land or portion of the leased land.

(2) For the purposes of this section, the lessee shall be deemed to have been so discharged if the grant contains an acknowledgment by the lessee of his indebtedness in a specified sum in respect of the prior occupation, and an agreement or covenant by the lessee to pay the sum so specified, notwithstanding that that sum be less than the amount of his total liability, obligation or indebtedness in respect of the prior occupation.

### **Survey fees**

**3A. (1)** The Minister may fix such survey fees as he thinks fit, in respect of any land leased under this Ordinance.

(2) Where the Minister has fixed a survey fee in respect of any land leased under this Ordinance, he shall forward to the lessee of that land, at his last known address, a notice in writing specifying the amount of the fee and the date upon which the fee is payable.

(3) Where a notice as prescribed in this section has been forwarded to the lessee of any land, the survey fee fixed in respect of that land shall be payable by the lessee to the Commonwealth on the date for payment specified in the notice:

Provided that the Minister may consent to the payment of the fee at such later date or by such instalments as he thinks fit.

### **Persons to whom, and purposes for which, leases may be granted**

**4.** Subject to this Ordinance and the Regulations the Minister or the person authorized as aforesaid may determine the persons to whom, and the purposes for which, leases may be granted.

### **Value of land that may be leased**

**4AA. (1)** The Minister shall not grant, or consent to the assignment of, a lease for rural purposes to a person if, as a result of the grant or assignment of that lease, that person would hold a lease or leases for rural purposes the value of which would exceed Two hundred thousand dollars.

(2) For the purposes of this section—

“rural purposes” means one or more of the following purposes, being purposes that the Minister has, under section four of this Ordinance, determined to be purposes for which a lease may be granted:

- (a) grazing;
- (b) fruitgrowing;
- (c) horticulture;
- (d) dairying;
- (e) agriculture;

“value”, in relation to a lease, means the value, determined by the Minister for the purposes of this section, of the lease at the date of the grant of the lease, without regard to the value of fixtures or erections on, or improvements made to, the land comprised in the lease.

(3) Subsection (1) of this section does not prevent the grant by the Minister of a lease or leases for rural purposes to a person if the land to be so leased is land that has been acquired,

whether before or after the commencement of this subsection, by the Commonwealth under the *Lands Acquisition Act 1955* or that Act as amended and, immediately before being so acquired—

- (a) was land held by that person for an estate in freehold; or
- (b) was land held by that person and was land to which a contract or right referred to in section 9 of the *Seat of Government (Administration) Act 1910* applied.

### **Erection of fences**

**4A. (1)** Lessees under this Ordinance shall erect on the boundaries of the land leased such fences as the Minister thinks necessary.

**(2)** Lessees of adjoining lands shall contribute in equal proportions to the construction of dividing fences between those lands.

**(3)** Upon the failure of any lessee to comply with the requirements of this section within such period as is specified by the Minister by notice in writing served upon the lessee the Minister may determine the lease.

**(4)** Where National Land leased under this Ordinance adjoins Territory Land leased under the *Leases Act 1918* of the Territory, subsections (2) and (3) have effect with respect to the adjoining Territory Land as if it were National Land leased under this Ordinance.

### **Regulations**

**5. (1)** The Minister may make Regulations, not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for and in relation to—

- (a) the persons to whom leases may be granted;
- (b) the purposes for which leases may be granted;
- (c) the periods for which leases may be granted;
- (d) the rent payable under leases;
- (e) the covenants and conditions of leases;
- (f) the method of recovering moneys due and unpaid under leases;
- (g) the determination of leases for non-fulfilment of covenants or conditions; and
- (h) the method of recovering land on the determination of leases.

## NOTES

1. This reprint sets out the provisions of the *Leases Ordinance 1918*, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The provisions of the *Leases Ordinance 1918* as shown in this reprint comprises Ordinance No. 2, 1918 amended as indicated in the Tables below.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

### Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Leases Ordinance 1918</i>	2, 1918	12 Sept 1918	12 Sept 1918	—
<i>Leases Ordinance 1919</i>	7, 1919	13 Nov 1919	13 Nov 1919	—
<i>Leases Ordinance 1923</i>	7, 1923	16 Aug 1923	16 Aug 1923	—
<i>Leases Ordinance (No. 2) 1923</i>	1, 1924	24 Jan 1924	24 Jan 1924	—
<i>Federal Commission's Ordinance 1924</i>	<i>Capital Powers</i> 12, 1924	20 Dec 1924	1 Jan 1925	—
<i>Leases Ordinance 1925</i>	4, 1925	1 Oct 1925	1 Oct 1925	—
<i>Leases Ordinance 1926</i>	12, 1926	4 Nov 1926	4 Nov 1926	—
<i>Leases Ordinance 1927</i>	10, 1927	26 May 1927	26 May 1927	—
<i>Leases Ordinance 1933</i>	15, 1933	13 July 1933	27 July 1933 (see <i>Gazette</i> 1933, No. 45, p. 1070)	S. 4 (as am. by No. 27, 1933 and No. 29, 1936)
	as amended by 27, 1933	16 Nov 1933	16 Nov 1933	—
	as amended by 29, 1936	23 July 1936	20 Jan 1938 (see <i>Gazette</i> 1938, No. 4, p. 801)	—
<i>Leases Ordinance (No. 2) 1933</i>	27, 1933	16 Nov 1933	16 Nov 1933	—
<i>Leases Ordinance 1936</i>	29, 1936	23 July 1936	20 Jan 1938 (see <i>Gazette</i> 1938, No. 4, p. 801)	—
<i>Ordinances Revision Ordinance 1937</i>	27, 1937	23 Dec 1937	23 Dec 1937	—
<i>Leases Ordinance 1955</i>	10, 1955	1 Dec 1955	1 Dec 1955	—
<i>Leases Ordinance 1958</i>	9, 1958	15 May 1958	15 May 1958	—
<i>Ordinances (Decimal Currency) Ordinance 1966</i>	19, 1966	23 Dec 1966	23 Dec 1966	—
<i>Leases Ordinance 1972</i>	7, 1972	9 Mar 1972	9 Mar 1972	S. 2 (2)
<i>Leases Ordinance 1982</i>	(Amendment) 107, 1982	31 Dec 1982	31 Dec 1982	—
<i>National Land Ordinance 1989</i>	39, 1989	10 May 1989	11 May 1989 (see s. 2 and <i>Gazette</i> 1989, No. S164)	S. 5 (6)

NOTES—continued

Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Provision	How affected
S. 1A.....	ad. No. 4, 1925 rep. No. 27, 1937
S. 2.....	am. No. 7, 1972
S. 3.....	am. No. 7, 1919; No. 4, 1925; No. 10, 1927; No. 29, 1936; No. 10, 1955; No. 39, 1989
S. 3AA.....	ad. No. 15, 1933 am. No. 27, 1933; No. 29, 1936; No. 107, 1982; No. 39, 1989
S. 3AAA.....	ad. No. 107, 1982 am. No. 39, 1989
S. 3AAB.....	ad. No. 107, 1982
S. 3AB.....	ad. No. 27, 1933 am. No. 27, 1937; No. 10, 1955
S. 3AC.....	ad. No. 27, 1933
S. 3A.....	ad. No. 10, 1927 am. No. 27, 1937; No. 10, 1955
S. 4.....	am. No. 9, 1958
S. 4AA.....	ad. No. 9, 1958 am. No. 19, 1966; No. 7, 1972
S. 4A.....	ad. No. 7, 1919 am. No. 39, 1989
Ss. 4B-4D.....	ad. No. 7, 1923 rep. No. 4, 1925
S. 4E.....	ad. No. 7, 1923 am. No. 1, 1924 rep. No. 4, 1925
S. 4F.....	ad. No. 7, 1923 rep. No. 4, 1925
S. 5.....	rep. No. 12, 1924 ad. No. 4, 1925 am. No. 12, 1926; No. 10, 1927; No. 27, 1937

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# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## LEASES REGULATIONS

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

### TABLE OF PROVISIONS

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## AUSTRALIAN CAPITAL TERRITORY

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### *Provisions of the* **LEASES REGULATIONS<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
- as modified by the *National Land Ordinance 1989*;  
and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

#### **Citation**

1. These Regulations may be cited as the Leases Regulations.<sup>2</sup>

#### **Repeal**

2. (1) The Leases Regulations made on the 13th day of November, 1919, and the Regulations amending those Regulations made on the 21st day of December, 1922, the 6th day of April, 1923, the 9th day of March, 1926, the 4th day of March, 1929, are repealed.

(2) The repeal of the Regulations mentioned in the last preceding subregulation shall not—

- (a) affect any right, privilege, obligation or liability acquired, accrued or incurred under those Regulations;
- (b) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against those Regulations; or
- (c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such right shall continue as is acquired under these Regulations, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if these Regulations had not been made.

#### **Interpretation**

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

“Land” means any land vested in the Commonwealth by virtue of the *Seat of Government Acceptance Act 1922* or acquired by the Commonwealth under the *Lands Acquisition Act 1906-1916* and includes all improvements thereon;

“The Minister” includes a person to whom the Minister has, in pursuance of section 12C of the *Seat of Government (Administration) Act 1910-1947*, delegated his powers and functions under the Ordinance;

“the Ordinance” means the applied provisions of the *Leases Ordinance 1918*;

“veteran” has the same meaning as in the *Veterans’ Entitlements Act 1986*.

### **Power of Minister to grant leases**

4. Any land of which, in the opinion of the Minister, immediate possession is not required by the Commonwealth may be leased.

### **Purposes for which land may be leased**

5. Leases may be granted for grazing, fruit-growing, horticultural, dairying, agricultural, residential, or business purposes or any other purpose approved by the Minister.

### **Period of lease**

5A. (1) The period for which a lease may be granted for grazing, fruit-growing, horticultural, dairying or agricultural purposes is a period not exceeding 50 years.

(2) The period for which a lease may be granted for a purpose other than a purpose specified in the last preceding subregulation is a period not exceeding 99 years.

### **Assessment of leasable lands**

6. The Minister may from time to time cause assessments to be made of the value of lands which may be leased.

### **Land available for lease to be notified in *Gazette***

8. Applications for leases shall be invited by notice in the *Gazette*, and shall be in such form as the Minister directs.

### **Matters to be taken into consideration by the Minister regarding eligibility for grant etc. of leases**

9. (1) Upon receipt of an application from any person for the grant of a lease or for the consent of the Minister to the assignment of a lease the Minister after making such inquiries as he deems advisable upon any one or more of the following matters:

- (a) the ability of the applicant or proposed assignee to carry out the conditions of the lease;
- (b) other lands (whether within or outside the Territory) owned, leased, or managed by the applicant or proposed assignee;
- (c) whether the applicant or proposed assignee resides or intends to reside in the Territory;
- (d) whether the applicant or proposed assignee is a veteran; and
- (e) any other matters which he thinks fit,

shall determine whether the applicant or the proposed assignee, as the case may be, is eligible to become a lessee.

(2) A lease shall not be granted to any person unless the Minister previously determines that he is eligible to become a lessee.

### **Power to lease without inviting applications**

10. Notwithstanding anything contained in these Regulations, the Minister may, if he thinks fit, without inviting applications for a lease, grant a lease to any person.

### **Tenders for lease of land**

**12. (1)** Notwithstanding anything contained in these Regulations, the Minister may, if he thinks fit, by notice in the *Gazette*, invite applications for leases in the form of tenders.

**(2)** Tenders shall be in such form as the Minister directs and shall state the amount of rental offered.

**(3)** If in respect of the grant of a lease of a parcel of land for which applications in the form of tenders have been invited the highest amount of rental offered by any applicant whom the Minister determines is eligible to become a lessee is less than the reserve rental, the Minister may at any time thereafter, without inviting further applications, grant a lease of that parcel of land at the reserve rental.

**(4)** “Reserve rental” means the rental fixed by the Minister as the lowest rental at which the Minister is prepared to grant a lease of the land.

### **Ballot for land**

**13.** If two or more applicants for a lease of the same land are, in the opinion of the Minister, equally eligible to become lessees, the Minister may determine by ballot or otherwise the applicant to whom the lease shall be granted.

### **Minister not bound to grant lease**

**14.** The Minister shall not be bound to grant a lease to any applicant and may before a lease is granted—

- (a) revoke the notice inviting applications; or
- (b) invite fresh applications for leases on the same or other conditions.

### **Minister may grant lease at any time after inviting applications**

**15.** If an application for the grant of a lease of a parcel of land for which applications have been invited under these Regulations is not received from any person whom the Minister determines is eligible to become a lessee, the Minister may, without inviting further applications, at any time thereafter grant a lease of that parcel of land.

### **Deposits with applications**

**18.** The Minister may require any applicant for a lease to deposit as security with his application a sum fixed by the Minister, and may determine the conditions governing the disposal of the sum deposited.

### **Leases not to be assigned, transferred, or sublet without permission**

**19.** Except with the previous consent in writing of the Minister a lessee shall not—

- (a) assign his lease;
- (b) sublet the leased land; or
- (c) part with the possession of the leased land,

and any assignment, sublease, agreement or arrangement in contravention of this regulation shall be void.

### **Conditions in respect to assignment of leases**

**20. (1)** Consent to the assignment of a lease shall not be given unless the Minister previously determines that the proposed assignee is eligible to become a lessee.



(2) Subject to the last preceding subregulation the Minister may in any case under the last preceding regulation refuse consent or may grant consent unconditionally or subject to such conditions as the Minister determines.

#### **Recovery of moneys due under lease**

21. Where moneys are due and unpaid under a lease, the Minister may sue for and recover from the lessee the amount of the moneys due before a Court of competent jurisdiction.

#### **Determination of leases**

22. The Minister may at any time, on failure by a lessee to fulfil all or any of the conditions of his lease or on contravention by the lessee of any provision of these Regulations, determine the lease.

#### **Recovery of possession of land after determination of lease**

23. If after a lease has been determined the lessee or any person apparently in occupation or possession of the land fails on demand by or on behalf of the Minister to deliver up possession thereof, a Magistrate may, on the application of the Minister or of any person acting in that behalf for the Minister, issue a Warrant authorizing any member of the Police Force of the Commonwealth or State, within a period of not more than 30 days from the date of the Warrant, to enter on the land by force, and with such assistance as is necessary, and deliver possession thereof to the Commonwealth.

#### **Resumption of land for public purposes**

24. (1) The Minister, by notice in writing to the lessee, may resume any portion of the land which is required for any public purposes of the Commonwealth:

Provided however that should the lease be for a term greater than 5 years a notification of such resumption shall be published in the *Gazette*.

#### **Compensation for land resumed**

(2) The Commonwealth may pay compensation in respect of any improvements effected by the lessee on the land resumed in pursuance of the last preceding subregulation.

#### **Leases for recreation and sports grounds**

25. (1) The Minister may, without inviting applications therefor, by notice in the *Gazette*, grant a lease to trustees for the residents of the Territory, or any part thereof, of any land for use by the said residents as a recreation and sports ground.

(2) Any lease granted in pursuance of this Regulation shall be for a period not exceeding 99 years, and shall, notwithstanding anything contained in these Regulations, be upon such terms and conditions as the Minister determines.

## NOTES

1. This reprint sets out the provisions of the Leases Regulations, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The Leases Regulations (in force under the *Leases Ordinance 1918*) as shown in this reprint comprise Regulations made on 28 March 1929 amended as indicated in the Tables below.

The Leases Regulations were amended by the *Magistrates Court Ordinance 1985* and the *National Land Ordinance 1989*. The amendments have been incorporated in this reprint.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

### Table of Regulations

Year and No.	Date of making	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
—	28 Mar 1929	25 Apr 1929	25 Apr 1929	
—	16 Dec 1938	22 Dec 1938	22 Dec 1938	—
1941 No. 6	27 Aug 1941	4 Sept 1941	4 Sept 1941	—
1950 No. 1	16 Mar 1950	30 Mar 1950	30 Mar 1950	—
1955 No. 13 (a)	5 Dec 1955	15 Dec 1955	15 Dec 1955	—
1958 No. 8	15 May 1958	22 May 1958	22 May 1958	—
1975 No. 19	19 Sept 1975	19 Sept 1975	19 Sept 1975	—
1979 No. 26	26 Nov 1979	29 Nov 1979	29 Nov 1979	—

- (a) Regulation 7 was repealed by regulation 3 of Regulations 1955 No. 13, and a new regulation 7 was inserted in its stead. Regulation 3 of Regulations 1955 No. 13 was disallowed by the Senate on 9 May 1956. By virtue of subsection 16 (3) of the *Interpretation Ordinance 1937-1955*, the disallowance had the same effect as a repeal of regulation 3 of Regulations 1955 No. 13; i.e., the regulation 7 repealed by regulation 3 did not revive and the new regulation 7 proposed to be inserted in its stead was not inserted.

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
R. 1 .....	am. 1979 No. 26
R. 3 .....	am. 1950 No. 1; 1955 No. 13; 1979 No. 26; Ordinance No. 39, 1989
R. 4 .....	am. Regulations made on 16 December 1938
R. 5 .....	am. Regulations made on 16 December 1938; 1955 No. 13
R. 5A .....	ad. 1958 No. 8 am. 1979 No. 26
R. 6 .....	am. Regulations made on 16 December 1938
R. 7 .....	am. 1941 No. 6
R. 8 .....	am. Regulations made on 16 December 1938
R. 9 .....	am. Regulations made on 16 December 1938; 1955 No. 13; Ordinance No. 39, 1989
R. 10 .....	am. Regulations made on 16 December 1938 rs. 1975 No. 19 am. 1979 No. 26
R. 11 .....	am. Regulations made on 16 December 1938 rep. 1975 No. 19
Rr. 12-14 .....	am. Regulations made on 16 December 1938
R. 15 .....	am. Regulations made on 16 December 1938; 1979 No. 26
R. 16 .....	am. Regulations made on 16 December 1938 rep. 1975 No. 19
R. 17 .....	am. Regulations made on 16 December 1938; 1955 No. 13 rep. 1975 No. 19
Rr. 18-21 .....	am. Regulations made on 16 December 1938
R. 22 .....	am. Regulations made on 16 December 1938; 1979 No. 26
R. 23 .....	am. Regulations made on 16 December 1938; 1979 No. 26; Ordinance No. 67, 1985
R. 24 .....	am. Regulations made on 16 December 1938; 1979 No. 26
R. 25 .....	am. Regulations made on 16 December 1938; 1955 No. 13; 1979 No. 26

## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **LEASES (SPECIAL PURPOSES) ORDINANCE 1925**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

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5AB.	Rent
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5AD.	Unimproved value
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5BA.	Tenant right in improvements
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8.	Recovery of cost of fencing or cleaning land
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## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **LEASES (SPECIAL PURPOSES) ORDINANCE 1925<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
- as modified by the *National Land Ordinance 1989*;  
and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

An Ordinance relating to the Leasing of Commonwealth Land for purposes other than Business or Residential Purposes

#### **Short title**

1. This Ordinance may be cited as the *Leases (Special Purposes) Ordinance 1924*.<sup>2</sup>

#### **Power to grant leases**

**3. (1)** Subject to this Ordinance the Minister may grant leases of land within the City Area for any purposes other than business or residential purposes.

**(2)** Subject to this Ordinance, the Minister may grant to the Government of any country outside the Commonwealth or to any accredited agent of that Government a lease of land within the City Area for any diplomatic, consular or official purpose of that Government or for the purpose of an official residence for any accredited agent of that Government or for all or any number of those purposes.

**(3)** Subject to this Ordinance, the Minister may, on behalf of the Commonwealth, grant to any approved association a lease of Territory Land within the City Area for the purposes of the association.

**(5)** For the purposes of subsection (3) of this section “approved association” means any society, association or other body which is not carried on for profit or gain to the individual members thereof and which the Minister declares, by notice in the *Gazette*, to be, for the purposes of this section, an approved association.

#### **Land to be used for purposes of lease only**

**4.** Land leased under this Ordinance shall not be used for any purpose other than the purpose specified in the lease.

#### **Terms and conditions of leases**

**5.** A lease granted under this Ordinance shall be—

- (a) for any period not exceeding ninety-nine years; and
- (b) subject to such covenants and conditions as to rent and otherwise as the Minister determines, or as are prescribed.

#### **Notice to be given to persons interested before any lease is determined**

**5AA. (1)** Where, by virtue of any provision contained in any lease granted under this Ordinance, the Commonwealth may determine such lease, the lease shall not be determined until every person registered under the *Real Property Act 1925* of the Territory as having an

interest in such lease has been given fourteen days' notice that the Commonwealth intends, in pursuance of the powers contained in such lease, to determine the lease.

(2) Any notice by the last preceding subsection required to be given may be served or given personally or by being sent by a registered letter posted to the person to whom notice is so required to be given at his address as entered in the Register Book kept under the *Real Property Act 1925* of the Territory and shall set out fully the conditions for failure to comply with which the lease may be determined.

## **Rent**

**5AB. (1)** This section applies only in relation to a lease granted under subsection 3 (1) or (3).

(2) In this section, the prescribed date is the first day of January, One thousand nine hundred and seventy-one.

(3) The rent—

- (a) to be reserved under a lease to which this section applies granted on or after the prescribed date; and
- (b) payable, on and after the prescribed date, under a lease to which this section applies granted before that date,

shall be Five cents per annum to be paid if and when demanded by the Minister.

(4) On and after the prescribed date—

- (a) a provision in a lease to which this section applies granted before the prescribed date reserving the rent payable under the lease;
- (b) a covenant in such a lease by the lessee to pay rent or additional rent under the lease; and
- (c) a covenant in such a lease by the lessee or the Commonwealth or any mutual covenant in such a lease by the lessee and the Commonwealth providing for the determination of the lease in the event of the rent payable under the lease remaining unpaid for any period,

cease, subject to subsection (6) of this section, to have any force or effect.

(5) On and after the prescribed date, a provision or a covenant in a lease to which this section applies granted before the prescribed date whereby any amount payable under the lease is deemed to be rent payable under the lease shall, subject to the next succeeding subsection, cease to have any force or effect, and any amount which, but for this subsection, would have been deemed to be rent payable under the lease is recoverable as a debt due and payable to the Commonwealth by the lessee.

(6) Nothing in the last two preceding subsections prevents the enforcement of a provision or covenant referred to in either of those subsections in respect of rent, additional rent or amounts deemed to be rent that had become payable before the prescribed date.

## **Application of sections 5AD, 5A and 5B**

**5AC.** Sections 5AD, 5A and 5B apply only in relation to a lease granted under section 3 (2).

### **Unimproved value**

**5AD. (1)** For the purposes of the next two succeeding sections, the unimproved value of land subject to a lease is the capital sum that might be expected to have been offered on the relevant date for the lease, it being assumed—

- (a) that the only improvements on or to the land were the improvements (if any) by way of clearing, draining, grading, filling, levelling or excavating made by or the Commonwealth or the cost of which the Commonwealth has paid;
- (b) that on the relevant date the lease had an unexpired term of ninety-nine years; and
- (c) that the rent payable under the lease was a nominal rent only.

**(2)** For the purposes of the last preceding subsection “the relevant date” is the date on which the unimproved value of the land is re-appraised under subsection (1) of section five A of this Ordinance.

### **Re-appraisal of unimproved value of leased land**

**5A. (1)** Where a lease to which this section applies provides for re-appraisal of the unimproved value of the leased land the unimproved value of that land shall be re-appraised by the Minister during the twentieth year of the term of the lease and during each twentieth year thereafter.

**(2)** During the period of twenty years next after the year of re-appraisal the rent payable in respect of the leased land shall be at such rate in relation to the unimproved value of the land, as determined in accordance with this or the next succeeding section, as is specified in the lease.

**(3)** Notice of re-appraisal under this section shall be given in writing by or on behalf of the Minister to the lessee within fourteen days after the date of re-appraisal.

### **Appeal against re-appraisal**

**5B. (1)** Application may be made to the Tribunal for review of a re-appraisal by the Minister under section 5A.

**(2)** In this section, “Tribunal” means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975*.

### **Tenant right in improvements**

**5BA. (1)** Where, upon the expiration of the term of a lease of land upon which there are improvements, the lessee is granted under this Ordinance a further lease of that land or of any part of that land, he shall not be liable to make any payment to the Commonwealth in respect of the improvements on that land or part.

**(2)** Where, upon the expiration of the term of a lease of land upon which there are improvements a further lease of the land or a lease of any part of the land is not granted to the lessee, the Commonwealth shall pay to the lessee the value of the improvements on that land or on any part not so leased.

**(3)** Where any land or part to which the last preceding subsection applies is not made available for leasing, the value of the improvements on that land or part shall be paid to the lessee forthwith.

(4) Where any land or part to which subsection (2) of this section applies is made available for leasing the value of the improvements on that land or part shall be paid to the lessee upon the grant of a further lease of that land to any other person.

(5) Where, between the date of the expiration of a lease of land upon which there are improvements and the date of the grant of a further lease of that land or part thereof, the Commonwealth derives revenue part or all of which is attributable to the improvements on that land or part thereof, the Territory shall pay to the lessee, from time to time, as the Minister determines, the difference between such sum as the Minister determines is attributable to revenue from those improvements and the amount of such expenditure as the Minister determines has been incurred by the Commonwealth in maintenance and other costs in respect of those improvements.

(6) Notwithstanding anything contained in any lease, where a lessee of land under this Ordinance has fully complied with any covenants of his lease with respect to the erection of a building on that land and the lease is determined or surrendered, by virtue of any provision contained in the provisions of this section relating to the payment to a lessee of the value of the improvements on the land comprised in his lease upon its expiration shall apply as if the term of the lease had expired on the date of the determination or surrender:

Provided that there shall be deducted from any sum payable in respect of the value of the improvements on the land the amount of such expenditure as the Minister determines has been incurred by the Commonwealth in connexion with the determination or surrender of the lease.

(7) For the purposes of this section—

“improvements” includes buildings and erections, but does not include improvements effected at the cost of the Commonwealth unless the Territory has received or is entitled to receive payment for the improvements;

“lease” means the person who was the lessee under a lease which has been determined or surrendered or the term of which has expired; and

“value”, in relation to improvements on land, means the value of the improvements determined in accordance with section 5BB.

### **Determination of value of improvements**

**5BB. (1)** In this section—

“lessee” has the same meaning as in section 5BA;

“market value”, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale at a *bona fide* sale on the day immediately before the proscribed date on such reasonable terms and conditions as a *bona fide* seller would require;

“proscribed date” means, in relation to land the lease of which has expired or has been determined or surrendered, the date of expiry, determination or surrender, as the case requires.

(2) Where compensation is payable under section 5BA in respect of improvements, the Minister shall, as soon as practicable after the date that is the proscribed date in relation to land, by instrument in writing determine, in accordance with this section, the market value of the improvements on the land as at the proscribed date.

(3) Where the compensation is payable by virtue of subsection 5BA (2), the Minister shall, in valuing the improvements, assume that the lease of the land had been renewed subject to the same covenants and conditions, and for the same term, as the lease the term of which had expired.

(4) Where the compensation is payable by virtue of subsection 5BA (6), the Minister shall, in valuing the improvements, assume that the lease of the land had not been determined or surrendered.

(5) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Minister determining the value of improvements under this section.

(6) Where the Minister makes a decision determining the value of improvements under this section, the Minister shall, not later than 30 days after the date of the decision, cause a notice in writing to be given to the lessee—

- (a) giving the reasons for the decision; and
- (b) including a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, the lessee is entitled to apply to the Administrative Appeals Tribunal for a review of the decision.

(7) The validity of a decision referred to in subsection (5) shall not be taken to be affected by a failure to include in a notice for the purposes of subsection (6) a statement in accordance with paragraph (6) (b).

### **Payment of survey fees**

**5C.** (1) The lessee under a lease granted under subsection (2) of section three of this Ordinance shall pay to the Minister the survey fee fixed by the Minister for surveying the leased land.

(2) The survey fee shall, unless sooner paid, be paid within such time after the date of the lease as the Minister determines.

### **Fences**

**6.** (1) The Minister may, by notice in writing to the lessee of land leased under this Ordinance or the applied provisions of the *City Area Leases Ordinance 1924*, require the lessee to erect a fence on the boundary or any portion of the boundary of the land leased.

(2) Where the boundary to be fenced is a common boundary between two parcels of land leased under different leases granted under this Ordinance or the applied provisions of the *City Area Leases Ordinance 1924*, the Minister may, by notice in writing to each of the lessees, require them jointly to erect the fence.

(3) A notice under this section shall specify the fence to be erected and the portion of the boundary upon which it is to be erected.

(4) If a fence in compliance with the notice is not erected within one month after the date of the notice—

- (a) the Minister may, at the cost of the lessee, cause the fence to be erected; and
- (b) the lessee shall pay to the Minister on demand, the amount fixed by the Minister as the cost of erecting the fence or as the proportion payable by the lessee of that cost.

(5) Where land referred to in subsection (1) adjoins Territory Land leased under—

- (a) the *City Area Leases Act 1924* of the Territory; or



(b) the *Leases (Special Purposes) Act 1925* of the Territory;

subsections (1) to (4) (inclusive) have effect with respect to the adjoining Territory Land as if it were National Land leased under this Ordinance.

### **Land to be kept clean**

**7. (1)** Land leased under this Ordinance shall at all times be kept by the lessee clean, tidy and free from debris, dry herbage, rubbish, carcasses of animals, and other unsightly or offensive matter.

**(2)** Upon a non-compliance with this section the Minister may at the cost of the lessee cause any matter or thing to be removed from the land and restore the land to a clean and tidy condition.

**(3)** The lessee shall pay to the Minister, on demand, the amount fixed by the Minister as the cost incurred by the Minister by reason of the failure of the lessee to comply with subsection (1) of this section.

### **Recovery of cost of fencing or cleaning land**

**8.** An amount payable under section six or seven of this Ordinance is recoverable as a debt due to the Commonwealth.

### **Certain provisions not to apply**

**9.** Nothing in the applied provisions of the *Leases Ordinance 1918* or the *City Area Leases Ordinance 1936* has effect with respect to land leased under this Ordinance.

### **Regulations**

**10.** The Minister may make regulations, not inconsistent with this Ordinance prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and, in particular, prescribing matters providing for and in relation to—

- (a) the covenants and conditions of leases;
- (b) the method of recovering moneys due and unpaid under leases;
- (c) the determination of leases for non-fulfilment of covenants or conditions;
- (d) the method of recovering land on the determination of leases; and
- (e) the fees payable in respect of leases.

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## **NOTES**

1. This reprint sets out the provisions of the *Leases (Special Purposes) Ordinance 1925*, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.

2. The provisions of the *Leases (Special Purposes) Ordinance 1925* as shown in this reprint comprise Ordinance No. 11, 1925 amended as indicated in the Tables below.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

## Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Leases (Special Purposes) Ordinance 1925</i>	11, 1925	5 Nov 1925	5 Nov 1925	
<i>Leases (Special Purposes) Ordinance 1927</i>	5, 1927	30 Apr 1927	30 Apr 1927	—
<i>Leases (Special Purposes) Ordinance 1929</i>	14, 1929	18 June 1929	18 June 1929	—
<i>Leases (Special Purposes) Ordinance 1930</i>	8, 1930	26 June 1930	26 June 1930	—
<i>Leases (Special Purposes) Ordinance 1932</i>	7, 1932	25 Feb 1932	25 Feb 1932	—
<i>Leases (Special Purposes) Ordinance 1936</i>	3, 1936	23 Jan 1936	23 Jan 1936	—
<i>Leases (Special Purposes) Ordinance 1943</i>	4, 1943	28 Jan 1943	28 Jan 1943	—
<i>Leases (Special Purposes) Ordinance 1970</i>	46, 1970	17 Dec 1970	1 Jan 1971	—
<i>Leases (Special Purposes) (Amendment) Ordinance 1981</i>	42, 1981	10 Nov 1981	10 Nov 1981	—
<i>Leases (Special Purposes) (Amendment) Ordinance 1986</i>	17, 1986	13 June 1986	13 June 1986	—
<i>National Land Ordinance 1989</i>	39, 1989	10 May 1989	11 May 1989 (see s. 2 and <i>Gazette</i> 1989, No. S164)	—

## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 2 .....	rep. No. 39, 1989
S. 3 .....	rs. No. 14, 1929 am. No. 8, 1930; No. 7, 1932; No. 46, 1970
S. 5 .....	am. No. 5, 1927; No. 7, 1932
S. 5AA .....	ad. No. 7, 1932; No. 39, 1989
S. 5AB .....	ad. No. 7, 1932 rs. No. 46, 1970 am. No. 39, 1989
S. 5AC .....	ad. No. 46, 1970 rs. No. 39, 1989
S. 5AD .....	ad. No. 46, 1970
S. 5A .....	ad. No. 5, 1927 am. No. 3, 1936; No. 46, 1970
S. 5B .....	ad. No. 5, 1927 am. No. 46, 1970 rs. No. 42, 1981
S. 5BA .....	ad. No. 4, 1943 am. No. 17, 1986
S. 5BB .....	ad. No. 17, 1986
S. 5C .....	ad. No. 5, 1927 am. No. 7, 1932; No. 46, 1970
S. 6 .....	am. No. 7, 1932
S. 7 .....	am. No. 7, 1932
S. 8 .....	am. No. 7, 1932 rs. No. 46, 1970
S. 9 .....	rs. No. 39, 1989
S. 10 .....	am. No. 5, 1927; No. 7, 1932

## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **PROTECTION OF LANDS ORDINANCE 1937**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

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# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## **PROTECTION OF LANDS ORDINANCE 1937<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

An Ordinance to provide for the Protection of Commonwealth Lands

### **Short title**

1. This Ordinance may be cited as the *Protection of Lands Ordinance 1937*.<sup>2</sup>

### **Interpretation**

2. In this Ordinance, unless the contrary intention appears—

“authorized officer”, in relation to any act, matter or thing, means a person thereto authorized in writing by the Minister;

“carriageway”, in relation to a public street, includes the gutter, if any, of the public street;

“lands” means lands vested in the Commonwealth;

“Motor Traffic Act” means the *Motor Traffic Act 1936* of the Territory;

“off-street parking area” has the same meaning as in the Motor Traffic Act;

“permit” means a permit issued under this Ordinance;

“public street” has the same meaning as in the Motor Traffic Act;

“retention area” means an area declared under section 9 to be a retention area;

“vehicle” has the same meaning as in the Motor Traffic Act.

### **Application**

**2A.** This Ordinance does not apply to or in relation to any lands placed under the control of the Commissioner for Housing for the Australian Capital Territory pursuant to the *Housing Assistance Act 1987* of the Territory.

### **Sand, gravel etc. not to be taken without permit**

**3. (1)** A person shall not, without a permit in that behalf issued under this Ordinance, take from any lands any stone, shell, sand, gravel, clay or earth.

Penalty: Twenty dollars.

**(2)** The Minister may, for such period as he thinks fit, by notice published in the *Gazette*, suspend the operation of this section in respect of any substance or in respect of any lands, and this section shall thereupon cease to apply in respect of that substance or those lands, as the case may be, until the expiration of the period of suspension, or until the suspension is sooner revoked, whichever first happens.

**(3)** The Minister may, at any time, by notice published in the *Gazette*, revoke any such suspension.

### **Power to grant permits**

4. (1) The Minister or an authorized officer may issue permits to go upon any lands and to take therefrom any substance referred to in the last preceding section.

(2) A permit may be limited to any particular substance, and to any particular lands, district or locality.

(3) A permit shall continue in force for the period specified therein and no longer, and shall not be issued for any period exceeding twelve months.

(4) A permit shall only be granted over lands included in a lease in cases where the substances are reserved to, or are the property of, the Crown.

(5) A permit issued under this section shall not extend to authorize the taking from any lands any substance which is, or appears to be, metalliferous.

### **Terms and conditions of permits**

5. (1) The terms and conditions on which a permit may be issued shall be as determined by the Minister, and any permit may be cancelled by the Minister or an authorized officer for non-compliance by the holder of the permit with any term or condition of the permit.

(2) Where the Minister or an authorized officer cancels any permit, the Minister or the authorized officer shall forward by post to the person whose permit has been cancelled, at his address as stated in that permit, notice of the cancellation of the permit and the cancellation shall be deemed to take effect at the time the notice would have been delivered in the ordinary course of post.

### **Fees for permits**

6. The fee payable for a permit shall be at the rate of \$5 per month or portion of a month for each vehicle to be used for taking any substance in pursuance of the permit.

### **Sand and gravel pits**

6A. (1) The Minister may, by notice in the *Gazette*, declare any lands to be a sand and gravel pit and may by like notice revoke any such declaration.

(2) Notwithstanding anything contained in sections three and four of this Ordinance, the Minister may, by notice published in a newspaper circulating in the Territory—

(a) declare, with respect to any sand and gravel pit, that any stone, shell, sand, gravel, clay or earth may, notwithstanding anything contained in sections three and four of this Ordinance, be taken therefrom on payment of such charges and subject to such conditions as are set out in the notice; and

(b) vary from time to time any such charge or condition,

and any such substance may be taken from the sand and gravel pit on payment of the charges and subject to the conditions declared by the Minister in pursuance of this section.

(3) Any person who takes any stone, shell, sand, gravel, clay or earth from any sand and gravel pit without paying the charges, and complying with the conditions set out in a notice referred to in the last preceding subsection shall be guilty of an offence and liable to a penalty of Forty dollars and, in addition to any penalty that may be imposed, the Court may order the defendant to pay the charges payable under this section in respect of any such substance so taken and the like proceedings may be taken upon the order as if the order had been a judgment of the Court in favour of the Commonwealth.

(4) A certificate by the Minister, or any person authorized by the Minister on that behalf, specifying the charges owing to the Commonwealth in respect of any such substance so taken, shall be *prima facie* evidence of the matters stated therein.

#### **Substances etc. not to be placed on lands**

7. (1) A person shall not, without the authority of the Minister or an authorized officer (proof whereof shall lie upon the person accused), deposit, or cause to be deposited, on any unleased lands, any substance, material or thing.

Penalty: Forty dollars, and, if the substance, material or thing continue on the land for more than one day, a further penalty not exceeding Ten dollars for each day or portion of a day during which they so continue.

(2) A person who, in pursuance of a permit in force under the applied provisions of the *Roads and Public Places Act 1937* of the Territory, places an object in, over or across a public place does not, by reason of so placing the object, commit an offence against subsection (1).

#### **Excavations or obstructions on lands to be lighted**

8. Where any excavation or obstruction is made, or any substance or material is placed, on any unleased lands with the authority of the Minister or an authorized officer, or any work is being carried on on any unleased lands entailing the opening up or breaking of the surface thereof, the person making, or permitting or causing to be made, the excavation or obstruction, or placing the substance or material, or permitting or causing the substance or material to be placed, on the lands, or carrying out the works, shall cause sufficient lights to be affixed in a proper place to indicate clearly the excavation, obstruction, substance, material or works, and continue those lights every night from sunset to sunrise while the excavation, obstruction, substance, material or works continue, and shall during all that time at his own expense cause the place on which they are continued to be sufficiently fenced or enclosed to prevent any danger or inconvenience to any person.

Penalty: Forty dollars.

#### **Retention area**

9. The Minister may, from time to time, by notice published in the *Gazette*, declare an area of land specified in the notice to be a retention area for the purposes of this Ordinance.

#### **Substance etc. may be removed from certain land**

10. (1) Subject to subsection (2), the Minister or an authorized officer may cause to be removed and placed in a retention area any substance, material or thing that is on—

- (a) land lying between the carriageway of a public street and the boundary of leased land;
- (b) any part of a public street, including land lying between the carriageways of a public street; or
- (c) any other unleased land.

(2) Subsection (1) does not apply to or in relation to—

- (a) a substance, material or thing that is on the land with the authority of the Minister or an authorized officer or by virtue of any law of the Territory;
- (b) an object that was placed on the land in pursuance of a permit in force under the applied provisions of the *Roads and Public Places Act 1937* of the Territory; or

- (c) a vehicle that is parked—
  - (i) on the carriageway of a public street; or
  - (ii) in an off-street parking area,

unless the Minister or authorized officer has reasonable grounds for believing that the vehicle has been abandoned.

(3) A substance, material or thing that is on an area of land at the time at which the land is declared, under section 9, to be a retention area shall, for the purposes of this section and sections 11 to 15 (inclusive), be deemed to have been placed in the retention area in pursuance of subsection (1).

#### **Substance etc. to remain in retention area**

11. Any substance, material or thing placed in a retention area shall remain in that area—

- (a) where a claim under section 13 is made—until the claim is determined or, where a period is fixed under paragraph 13 (1) (b), until the expiration of that period; or
- (b) where no claim is made—for a period of 3 months from the date of publication of a notice under section 12 in relation to the substance, material or thing.

#### **Publication of notice**

12. Within 7 days of the removal from the land of the substance, material or thing, the Minister or an authorized officer shall cause to be inserted in a daily newspaper circulating in the Territory a notice stating—

- (a) particulars of the substance, material or thing and of the place from which it was removed;
- (b) the retention area in which the substance, material or thing is stored; and
- (c) a statement that any person claiming to be entitled to the possession of the substance, material or thing may apply, in accordance with the provisions of section 13, to the Magistrates Court for its return.

#### **Application for return of substance etc.**

13. (1) A person may, within a period of 2 weeks from the date of publication of a notice under section 12, or within such further time as the Magistrates Court, on application made before or after the expiration of that period, allows, apply to the Court for an order—

- (a) that he is entitled to the possession of the substance, material or thing the subject of the notice; and
- (b) that the substance, material or thing be delivered to him at the retention area in which it is being held, within such period as the Court fixes, on payment by him to Australia of such removal expenses as the Court determines.

(2) Upon an application being made under subsection (1) the Court shall hear and determine the matter.

(3) An order made under subsection (1) does not affect the right of any other person to claim the matter the subject of the order from the applicant in a court of competent jurisdiction.

### Disposal of substance etc.

14. Where, in respect of a substance, material or thing removed in pursuance of this Ordinance—

- (a) no application under section 13 is made within a period of 3 months from the date of publication of the notice under section 12; or
- (b) where an application is made, an amount ordered by the Magistrates Court to be paid to Australia is not so paid within 3 months of the date of the order,

the ownership of the substance, material or thing shall be deemed, for all purposes, to vest in Australia and the substance, material or thing may be disposed of in such manner as the Minister directs.

### No liability for damage caused by removal etc.

15. Australia or a person acting in pursuance of this Ordinance is not liable for reasonable damage caused by the removal or retention of a substance, material or thing.

### Certificate evidence of contents

16. For the purposes of sections 7 and 10, a certificate given by the Secretary of the Department that land is unleased land is evidence of the contents of the certificate.

## NOTES

1. This reprint sets out the provisions of the *Protection of Lands Ordinance 1937*, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The provisions of the *Protection of Lands Ordinance 1937* as shown in this reprint comprise Ordinance No. 33, 1937 amended as indicated in the Tables below.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

### Table of Ordinances

Ordinance		Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Protection of Lands Ordinance 1937</i>		33, 1937	23 Dec 1937	23 Dec 1937	
<i>Protection of Lands Ordinance 1944</i>		4, 1944	3 Feb 1944	3 Feb 1944	—
<i>Ordinances Ordinance 1959</i>	Revision	21, 1959	23 Dec 1959	31 Dec 1959	—
<i>Ordinances (Decimal Ordinance 1966)</i>	Revision (Currency)	19, 1966	23 Dec 1966	23 Dec 1966	—
<i>Protection of Lands Ordinance 1976</i>		8, 1976	24 Feb 1976	24 Feb 1976	—
<i>Protection of Lands Ordinance (Amendment) 1976</i>		73, 1976	30 Dec 1976	30 Dec 1976	—
<i>Protection of Lands Ordinance (Amendment) 1980</i>		11, 1980	2 May 1980	2 May 1980	—



**NOTES—continued**

**Table of Ordinances—continued**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Housing Assistance Ordinance 1987</i>	36, 1987	29 July 1987	19 Aug 1987 (see <i>Gazette</i> 1987, No. S213)	—
<i>National Land Ordinance 1989</i>	39, 1989	10 May 1989	11 May 1989 (see s. 2 and <i>Gazette</i> 1989, No. S164)	S. 5 (7)

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 2	am. Nos. 8 and 73, 1976; No. 39, 1989
S. 2A	ad. No. 36, 1987
S. 3	am. No. 19, 1966
S. 6	am. No. 19, 1966; No. 11, 1980
S. 6A	ad. No. 4, 1944 am. No. 21, 1959; No. 19, 1966
S. 7	am. No. 19, 1966; Nos. 8 and 73, 1976; No. 39, 1989
S. 8	am. No. 19, 1966
S. 9	ad. No. 8, 1976
S. 10	ad. No. 8, 1976 am. No. 73, 1976; No. 39, 1989
S. 11	ad. No. 8, 1976
Ss. 12-14	ad. No. 8, 1976 am. No. 67, 1985
S. 15	ad. No. 8, 1976
S. 16	ad. No. 8, 1976 am. No. 39, 1989

## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **PUBLIC ROADS ACT 1902 (NEW SOUTH WALES)**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

#### **TABLE OF PROVISIONS**

Section

*Repeal, Savings and Interpretation*

- 1. Short title
- 6. Interpretation

*Dedication of roads*

- 18. Lands reserved as roads may be declared public roads

*Closing of unnecessary roads*

- 19. Notices of intention to close unnecessary road
- 20. Closing of unnecessary road

*Re-marking Roads*

- 23. Minister may re-mark
- 25. Notice of re-marking of road to be published
- 29. Protection to Crown

*Gazette notices*

- 35. Gazette notice conclusive evidence of due publication

## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **PUBLIC ROADS ACT 1902<sup>1</sup> (NEW SOUTH WALES)**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

An Act to consolidate the Acts relating to the opening, closing, survey, altering and improving of roads and the alignment and alteration of the alignment of streets in municipalities

#### *Repeal, Savings and Interpretation*

##### **Short title**

1. This Act may be cited as the Public Roads Act 1902.<sup>2</sup>

##### **Interpretation**

6. In this Act, unless the context or subject-matter otherwise indicates or requires—

“Local newspaper” means a newspaper published or circulating in the Territory.

“Road”, wherever used in this Act, includes any land proclaimed, dedicated, resumed or otherwise provided before or after the passing of this Act, as a public thoroughfare or way and, wherever used in sections 18 to 20 (inclusive), also includes any land defined, reserved or left, before or after the passing of this Act, as a road in any subdivision of land of the Crown in right of the Commonwealth or the State of New South Wales or in the measurement or granting of any such land as indicated upon the official plans of the same.

#### *Dedication of Roads*

##### **Lands reserved as roads may be declared public roads**

18. The Minister may, by notification in the *Gazette*, declare any road to be a public road and, thereupon, the road shall be dedicated to the public accordingly and shall be withdrawn from any lease or licence from the Territory or Commonwealth under which it was held and no compensation shall be payable in respect thereof.

#### *Closing of unnecessary roads*

##### **Notices of intention to close unnecessary road**

19. (1) If the Minister is of opinion that it is expedient to close any road or part thereof, notice to that effect shall be published in the *Gazette* and in some local newspaper and written notice to the like effect shall be posted by registered letter to the owners or occupiers of all lands having frontage to the road or part thereof (as the case may be) if their names and addresses are known.

(2) Such a notice shall call upon all persons interested to set forth, in writing addressed to the Minister, within 1 month from the date of the publication thereof, any objections which may appear to them to exist to the closing of the road or the part thereof.

### **Closing of unnecessary road**

**20. (1)** After due consideration of all such objections (if any), the Minister may, after the expiration of the month, by notification in the *Gazette*, close the aforesaid road.

**(2)** The lands comprised therein shall thereupon be freed and discharged from any rights of the public or any person to the same as a highway and shall become vested in the Commonwealth.

### ***Re-marking Roads***

#### **Minister may re-mark**

**23.** Whenever the position and boundaries of a road required for public traffic cannot be identified through the absence or loss of the survey marks, the Minister may cause the road to be re-marked.

#### **Notice of re-marking of road to be published**

**25. (1)** After the road has been re-marked as aforesaid, notice may be published in the *Gazette* and in some local newspaper setting forth generally the extent and direction of the road.

**(2)** Such notice shall—

- (a)** refer to a plan of survey of the re-marking of the road;
- (b)** state where the plan may be inspected;
- (c)** state that it is intended, subject to consideration of any objections received, to approve the plan; and
- (d)** call upon all persons interested to set forth, in writing, addressed to the Minister, within 1 month of the date of the notice, any objections they may have to the road as re-marked.

**(4)** After due consideration of all such objections (if any), the Minister may, by notice in the *Gazette* after the expiration of the month, approve the plan either with or without alteration and the road as re-marked according to the plan so approved shall represent and be deemed to be the original road.

#### **Protection to Crown**

**29.** No suit or action shall be maintainable against the Territory or Commonwealth for injury or damage resulting from any alignment or alteration of alignment under this Act.

### ***Gazette notices***

#### **Gazette notice conclusive evidence of due publication**

**35. (1)** The production of a copy of the *Gazette* or *Commonwealth Gazette* containing a notification purporting to be made under this Act shall, in all cases, be conclusive evidence of the due publication of the notification in accordance with the provisions of this Act and of the regularity of all proceedings relating thereto.

**(2)** The Minister may, by notification in the *Gazette* or *Commonwealth Gazette* (as the case requires), limit, correct or alter the terms of any such notification as aforesaid and such limitation, correction or alteration shall, unless otherwise specified, relate back to the date of the original notification.

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## NOTES

1. The Public Roads Act 1902 of the State of New South Wales (No. 95, 1902) as shown in this reprint was one of the laws in force in the Australian Capital Territory before 1 January 1911 and was therefore continued in force by the *Seat of Government Acceptance Act 1909* of the Commonwealth.
2. This reprint sets out the provisions of the Public Roads Act 1902 of the State of New South Wales, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.

The text of the Public Roads Act 1902 of the State of New South Wales in its application in the Territory as at 12 January 1987 comprises Part 5 of Schedule 2 to the *New South Wales Acts Act 1986* of the Territory (No. 91, 1986) as amended, for details of those amendments see (a).

- (a) The Public Roads Act 1902, in its application in the Territory, comprises the Public Roads Act 1902 as repealed in part by the *New South Wales Acts Application Ordinance 1985* and as amended by the *New South Wales Acts Act 1986*. The amendments made by the *New South Wales Acts Application Ordinance 1985* to the Public Roads Act 1902 ceased to have effect by reason of its subsequent disallowance.

Sections 2-5, 7-17, 21, 22, 24, 26-28, 30-34 and 36 and the Schedule were repealed by the *New South Wales Acts Application Ordinance 1985*.

Subsections 18 (2), (3) and (4), 19 (3) and (4), 20 (3) and 25 (3) were omitted by the *New South Wales Acts Application Ordinance 1985*.

# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## **RECOVERY OF LANDS ORDINANCE 1929<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

### **TABLE OF PROVISIONS**

Section

1. Short title
3. Method of determining leases
4. Warrant of ejectment
5. Notice of intention to apply for a warrant of ejectment
6. Incorporation of intention to apply for warrant with notice of determination
7. Notice to be left with Clerk of Court
8. Service of notice
9. Proof of service of notice
10. Notice by Commonwealth or the Minister
11. Certificate of Minister as to determination of lease to be evidence

### **THE SCHEDULE METHOD OF DETERMINING LEASES**

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An Ordinance to provide for the Recovery of Possession of Lands upon the determination of leases

#### **Short title**

1. This Ordinance may be cited as the *Recovery of Lands Ordinance 1929*.<sup>2</sup>

#### **Method of determining leases**

3. Where the Commonwealth may by virtue of any law or by virtue of any provision contained in a lease determine a lease, or where the Commonwealth has a right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in a lease, the Commonwealth may determine the lease by notice in writing, in accordance with Form A in the Schedule to this Ordinance, served on the lessee, stating that the lease has been determined and requiring the lessee to deliver up possession of the land to the Commonwealth.

#### **Warrant of ejectment**

4. If, after a lease has been determined in pursuance of the last preceding section or otherwise, the lessee or any person apparently in occupation or possession of the land fails to deliver up possession thereof to the Commonwealth within the time within which in the notice determining the lease, or, where the lease has been otherwise determined, in a notice in accordance with Form B in the Schedule to this Ordinance, served on the lessee, the lessee is required to deliver up possession of the land, a magistrate sitting as the Magistrates Court, may, on the application of the Minister, or of any person acting in that behalf for the Minister,

if in his opinion the lease has been lawfully determined, issue a warrant, in accordance with Form C in the Schedule to this Ordinance, authorizing any member of the Police Force, within a period of not more than thirty days after the date of the warrant, to enter on the land by force and with such assistance as is necessary and deliver possession thereof to the Commonwealth.

#### **Notice of intention to apply for a warrant of ejectment**

5. Notice, in accordance with Form D in the Schedule to this Ordinance, of the intention of the Minister or of any person acting in that behalf for the Minister, to make an application for a warrant in pursuance of the last preceding section, shall be served on the lessee not less than seven days before the time stated in the notice as the time at which the application may be made.

#### **Incorporation of intention to apply for warrant with notice of determination**

6. The notice of intention to make an application for a warrant may be incorporated with the notice of determination of the lease, or the notice requiring the lessee to deliver up possession of the land, as the case requires.

#### **Notice to be left with Clerk of Court**

7. The notice of the intention of the Minister to make an application for a warrant or a copy thereof, with an affidavit of service, in accordance with Form E in the Schedule to this Ordinance duly completed endorsed thereon, shall be left with the Clerk of the Court before the date upon which the application is to be made, and the application shall be included in the list of matters to be dealt with by the court upon that day.

#### **Service of notice**

8. Service of any notice under this Ordinance shall be deemed to have been duly effected if the notice or a true copy thereof is—

- (a) delivered to the lessee personally;
- (b) delivered to a person apparently over the age of sixteen years, on, and apparently an occupant of, the land the subject of the lease;
- (c) affixed in a prominent position on the land the subject of the lease; or
- (d) posted by prepaid registered post addressed to the lessee at his last known place of abode.

#### **Proof of service of notice**

9. Service of any notice under this Ordinance may be proved by affidavit endorsed upon the notice or a copy thereof.

#### **Notice by Commonwealth or the Minister**

10. Any notice that may be given by the Commonwealth or the Minister under this Ordinance shall be deemed to be a notice by the Commonwealth or the Minister if it is signed for and on behalf of the Commonwealth or the Minister.

#### **Certificate of Minister as to determination of lease to be evidence**

11. A certificate under the hand of the Minister or of such person as the Minister directs stating that a lease has been determined shall be evidence of the determination of the lease.

**THE SCHEDULE**

FORM A

Section 3

**THE AUSTRALIAN CAPITAL TERRITORY**

*Recovery of Lands Ordinance 1929* (provisions applied to National Land by the *National Land Ordinance 1989*)

**NOTICE OF DETERMINATION OF LEASE AND OF APPLICATION TO THE MAGISTRATES COURT FOR A WARRANT**

To \_\_\_\_\_ of \_\_\_\_\_

Take notice that your lease of that piece or parcel of land known as \_\_\_\_\_ has been determined by the Commonwealth in pursuance of the provisions of section 3 of the *Recovery of Lands Ordinance 1929*, by reason of (a)

You are therefore hereby required to deliver up to the Commonwealth possession of the land the subject of the said lease before the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(b) (And take further notice that if possession of the said land is not delivered up to the Commonwealth before the said \_\_\_\_\_ day of \_\_\_\_\_ 19 , application will be made to the Magistrates Court at \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon on the said day or as soon thereafter as may be for the issue of a warrant under section 4 of the said Ordinance authorizing entry to be made upon the said land and possession to be given to the Commonwealth.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

For and on behalf of the Commonwealth.

(a) State grounds of determination

(b) Omit this paragraph if it is not desired to give the notice contained therein concurrently with the notification of determination of the lease

FORM B

Section 4

**THE AUSTRALIAN CAPITAL TERRITORY**

*Recovery of Lands Ordinance 1929* (provisions applied to National Land by the *National Land Ordinance 1989*)

**NOTICE REQUIRING LESSEE TO DELIVER UP POSSESSION OF LEASED LAND**

To \_\_\_\_\_ of \_\_\_\_\_

Take notice that your lease of that piece or parcel of land known as \_\_\_\_\_ having been determined you are hereby required to deliver up to the Commonwealth possession of the land the subject of the said lease before the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(a) (And take further notice that if possession of the said land is not delivered up to the Commonwealth before the said \_\_\_\_\_ day of \_\_\_\_\_ 19 , application will be made to the Magistrates Court at \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon on the said day or as soon thereafter as may be for the issue of a warrant under section 4 of the *Recovery of Lands Ordinance 1929*, authorizing entry to be made upon the said land and possession to be given to the Commonwealth.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

For and on behalf of the Commonwealth.

(a) Omit this paragraph if it is not desired to give the notice contained therein concurrently with the notice requiring delivery up of possession

FORM C

Section 4

**THE AUSTRALIAN CAPITAL TERRITORY**

*Recovery of Lands Ordinance 1929* (provisions applied to National Land by the *National Land Ordinance 1989*)

In the Magistrates Court at \_\_\_\_\_

**WARRANT TO ENTER AND GIVE POSSESSION TO THE COMMONWEALTH**

Whereas \_\_\_\_\_ (hereinafter called the lessee) was a lessee from the Commonwealth of that piece or parcel of land situated at \_\_\_\_\_ and known as \_\_\_\_\_

And whereas—

(a) \_\_\_\_\_ and the said lease was accordingly determined (or \_\_\_\_\_ and the Commonwealth determined the said lease) And whereas after the determination of the said lease the said lessee failed after notice given in accordance with law by or on behalf of the Commonwealth to deliver up possession of the said land And whereas application to the Magistrates Court at \_\_\_\_\_ has this day been made before me a \_\_\_\_\_

Magistrate for the issue of a warrant authorizing a member of the Police Force of the Australian Capital Territory within a period not more than thirty days after the date hereof to enter on the said land by force and with such assistance as is \_\_\_\_\_



**THE SCHEDULE—continued**

necessary and deliver possession thereof to the Commonwealth: And whereas the above recited grounds for such application have been duly proved to the satisfaction of the said Court.

NOW therefore this Magistrates Court doth hereby under the powers conferred by the *Recovery of Lands Ordinance 1929* authorize and command you on any day (except on Sunday) between the hours of nine o'clock in the forenoon and four o'clock on the afternoon within a period of \_\_\_\_\_ days next after the date of this warrant to enter on the said land by force and with such assistance as is necessary and deliver possession thereof to the Commonwealth and for so doing this shall be your warrant.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19 .  
Magistrate sitting as Magistrates Court.

To \_\_\_\_\_ of \_\_\_\_\_

(a) State grounds of determination of lease

FORM D Section 5

THE AUSTRALIAN CAPITAL TERRITORY

*Recovery of Lands Ordinance 1929* (provisions applied to National Land by the *National Land Ordinance 1989*)

NOTICE OF INTENTION TO MAKE APPLICATION FOR WARRANT OF ENTRY

To \_\_\_\_\_ of \_\_\_\_\_

Whereas your lease of that piece or parcel of land known as \_\_\_\_\_ has been determined (a) (by the Minister)

And whereas you have failed pursuant to notice given in accordance with the *Recovery of Lands Ordinance 1929* to deliver up possession of the said land before the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Now therefore take notice that if possession of the said land is not delivered up to the Commonwealth before the \_\_\_\_\_ day of \_\_\_\_\_ 19 application will be made to the Magistrates Court at \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon on the said day or as soon thereafter as may be for the issue of a warrant under section 4 of the said Ordinance authorizing entry to be made upon the said land and possession to be given to the Commonwealth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 .  
For and on behalf of the Minister.

(a) Omit if unnecessary

FORM E Section 7

THE AUSTRALIAN CAPITAL TERRITORY

*Recovery of Lands Ordinance 1929* (provisions applied to National Land by the *National Land Ordinance 1989*)

In the Magistrates Court

AFFIDAVIT OF SERVICE

I \_\_\_\_\_ of \_\_\_\_\_ make oath and say that I served the within named lessee with a true copy of the within notice by—

- (a) delivering the said copy to the lessee personally;
- (b) delivering the said copy to a person apparently over the age of sixteen and apparently an occupant of the land the subject of the within mentioned lease;
- (c) affixing the said copy in a prominent position on the land the subject of the within mentioned lease;
- (d) enclosing the said copy in an envelope addressed as follows:

and by affixing all necessary postage stamps to such envelope and paying all necessary fees for registration thereof and by posting such envelope at the Post Office at \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_ 19 at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

SIGNED and sworn at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 before me—

## NOTES

1. This reprint sets out the provisions of the *Recovery of Lands Ordinance 1929*, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The provisions of the *Recovery of Lands Ordinance 1929 (a)* as shown in this reprint comprise Ordinance No. 1, 1929 amended as indicated in the Tables below.  
The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

### Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Recovery of Lands Ordinance 1929</i>	1, 1929	14 Feb 1929	14 Feb 1929	
<i>Recovery of Lands Ordinance 1930</i>	3, 1930	27 Mar 1930	27 Mar 1930	—
<i>Seat of Government (Administration) Ordinance 1930</i>	5, 1930	1 May 1930	1 May 1930	—
<i>Ordinances Revision Ordinance 1937</i>	27, 1937	23 Dec 1937	23 Dec 1937	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>National Land Ordinance 1989</i>	39, 1989	10 May 1989	11 May 1989 (see s. 2 and <i>Gazette</i> 1989, No. S164)	S. 5 (8)

- (a) The *Recovery of Lands Ordinance 1929* was also amended by the *Seat of Government (Designation) Ordinance 1938* (No. 25, 1938) as amended by the *Ordinances Revision Ordinances 1938* and *1959* (No. 35, 1938 and No. 21, 1959).

Section 2 of the *Seat of Government (Designation) Ordinance 1938*, as amended, provides as follows:

“2. Where, in any Ordinance, not being an Ordinance specified in the Schedule to this Ordinance, or in any regulation or rule made under an Ordinance, the words ‘Territory for the Seat of Government’ or ‘Territory for the Seat of Government of the Commonwealth’ or ‘Territory for the Seat of Government of the Commonwealth of Australia’ or ‘Federal Capital Territory’ appear, the Ordinance, regulation or rule (as the case may be) is amended by omitting those words and inserting in their stead the words ‘Australian Capital Territory’.”

The amendments have been incorporated in this reprint but do not appear in the Table of Amendments.

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 2 .....	rep. No. 5, 1930
S. 3 .....	am. No. 5, 1930; No. 27, 1937
S. 4 .....	am. No. 5, 1930; No. 67, 1985
S. 5 .....	am. No. 27, 1937
S. 7 .....	am. No. 27, 1937
Ss. 10, 11 .....	am. No. 27, 1937
The Schedule .....	am. No. 3, 1930; No. 27, 1937; No. 67, 1985; No. 39, 1989

# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## **ROADS AND PUBLIC PLACES ORDINANCE 1937**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

### **TABLE OF PROVISIONS**

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# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## **ROADS AND PUBLIC PLACES ORDINANCE 1937<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

An Ordinance relating to Roads and other Public Places

### **Short title**

1. This Ordinance may be cited as the *Roads and Public Places Act 1937*.<sup>2</sup>

### **Interpretation**

2. In this Ordinance, unless the contrary intention appears—

“authorized officer”, in relation to any act, matter or thing, means a person thereto authorized in writing by the Minister;

“owner”, in relation to land leased from the Commonwealth, means the lessee of the land;

“permit” means a permit granted under this Act;

“public place” means any place which the public are entitled to use or which is open to, or used by, the public and includes every public road;

“public road” means any street, road, lane, thoroughfare, footpath, or place open to, or used by, the public.

### **Level of roads**

3. (1) Subject to this section, the Minister may fix or alter the level of any public road.

(2) The level of any public road shall not be fixed or altered before an opportunity is given to persons interested in such fixation or alteration to be heard in relation thereto.

(3) At least thirty days before the fixing or altering of the level of any public road, the Minister shall cause a notice of his intention to fix or alter the level to be inserted twice in a newspaper circulating in the Territory.

- (4) The notice shall specify—

- (a) the name and situation of the road or part of the road the level of which it is intended to fix or alter;

- (b) the place where plans of the intended level may be inspected; and

- (c) the place where and the time when any person interested may be heard by an authorized officer.

(5) The authorized officer shall at the time and place mentioned in the notice hear all persons interested and shall furnish a report of the hearing to the Minister.

(6) The Minister may, thereupon, in his discretion, adopt or abandon or make such alterations in the intended level as he thinks fit.

### **Temporary closing of roads**

4. (1) The Minister may, subject to this section, temporarily close any public road against vehicular or other traffic.

(2) Except in cases of urgency, the Minister shall not close any public road against vehicular or other traffic unless—

- (a) notice of his intention to close the road has been published in a newspaper circulating in the Territory at least seven days before the date upon which it is intended to close the road; and
- (b) a notice indicating that the road is closed is displayed in some conspicuous place on the road.

(3) Any person who, without the permission of an authorized officer, uses any road so closed shall be guilty of an offence.

### **Temporary roads**

5. (1) Where a road is closed in pursuance of the last preceding section and it is necessary, in the opinion of the Minister or an authorized officer, to make a temporary road for use while the road is so closed, the Minister or an authorized officer may make a temporary road.

(2) If the land on which it is intended to make the road is fenced, the Minister or an authorized officer shall cause notice of his intention to make the road to be given to the occupier or owner of the land at least twenty-four hours before the making of the road is commenced:

Provided that it shall not be necessary for the notice to be given in any case where the Minister or an authorized officer is of opinion that it is essential that a temporary road should be made forthwith.

(3) Any person who obstructs or hinders the Minister, an authorized officer or his assistants in making a road in pursuance of this section shall be guilty of an offence.

### **Drains for surface water**

6. (1) Where surface water from any land overflows into and damages any public place, the Minister may, by notice in writing, require the owner of the land to repair any such damage and to construct such drains and in such situations as are specified in the notice within one month after service upon him of the notice.

(2) The owner shall maintain the drains in good order and condition.

(3) In the event of the owner failing to comply with any such notice or to maintain the drains in good order and condition, the Minister may enter on the land mentioned in the notice with such assistants as he deems necessary and construct or maintain the drains and may recover in any court of competent jurisdiction from the owner the cost of such construction and maintenance and, in addition, the cost of repairing the damage to the public place.

### **Damage to or interference with public places and property thereon**

7. Any person who—

- (a) wilfully or negligently damages or suffers or causes damage to be done to; or
- (b) without the permission in writing of the Minister or an authorized officer (proof whereof shall lie upon the person accused), interferes with,

any public place or any kerbstone, watertable, gutter, footpath or other work thereon or any fence, post, lamp, lamp post, structure or other property of the Commonwealth in any public place, shall be guilty of an offence.

### **Construction of culverts etc. in public places**

**8.** Any person who, without the permission of the Minister or an authorized officer (proof whereof shall lie upon the person accused)—

- (a) makes or places any culvert, bridge, crossing or drain across any watertable, watercourse or footpath in any public place; or
- (b) makes an excavation in a public place,

shall be guilty of an offence.

### **Permission to place culverts etc. across, and to interfere with the surfaces of, public places**

**9. (1)** The Minister or an authorized officer may grant permission to any person to make or place a culvert, bridge, crossing or drain across a watertable, watercourse or footpath in, or to open up or break the surface of, any public place, subject to subsection (2), upon payment of the fee determined under section 9A for the purposes of this subsection and in accordance with such conditions as the Minister determines.

**(2)** Where—

- (a) the Minister grants permission to a person to open up or break the surface of a public place; and
- (b) the permission is granted in connexion with the granting of a permit under this Ordinance,

the fee referred to in subsection (1) is not payable.

### **Power of Minister to determine fees**

**9A.** The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Ordinance.

### **Excavations etc. on public places to be lighted**

**10.** Where any excavation is made, or any substance or material is placed, on any public place, or any work is being carried on, on any public place entailing the opening up or breaking of the surface thereof, the person making, or permitting or causing to be made, the excavation, or placing the substance or material, or permitting or causing the substance or material to be placed, on the public place, or carrying out the works, shall cause sufficient lights to be affixed in a proper place to indicate clearly the excavation, substance, material or works, and continue those lights every night from sunset to sunrise while the excavation, substance, material or works continue, and shall during all that time at his own expense cause the place on which they are continued to be sufficiently fenced or enclosed to prevent any danger or inconvenience to any person.

Penalty: Forty dollars.

### **Alignment marks etc.**

**11.** Any person who, without lawful authority (proof whereof shall lie upon the person accused), pulls down, pulls up, destroys or damages any alignment or boundary mark, or any

stone, notice board, public notice or other erection in or on any public place shall be guilty of an offence.

### **Exhibition of advertisements or notices**

**12.** Any person who, without the permission of the Minister or an authorized officer (proof whereof shall lie upon the person accused), exhibits, by any means whatsoever, upon any property of the Commonwealth in or adjoining any public place, any advertisement or notice shall be guilty of an offence.

### **Trees etc. overhanging public places**

**13. (1)** Where any tree, sapling, plant, shrub or timber on any land overhangs any public place so as to obstruct or inconvenience passers by, an authorized officer may, by notice in writing, require the occupier of the land, within the time specified in the notice, so to cut the tree, sapling, plant, shrub or timber that it will not obstruct or inconvenience passers by.

**(2)** Where any tree, sapling, plant, shrub or timber, or part thereof, on any land adjoining any public place is in such a condition or situation as to endanger the safety of any person using the place, whether by obstructing the vision or otherwise, an authorized officer may, by notice in writing, require the occupier of the land to remove forthwith the tree, sapling, plant, shrub or timber, or part.

**(3)** Any occupier who fails to comply with any such notice shall be guilty of an offence.

### **Repair of damage to public places**

**14. (1)** Any person who causes damage to any public place other than the fair wear and tear due to ordinary and reasonable user of such place shall—

- (a) pay the cost incurred by the Commonwealth in making good the damage; or
- (b) if the Minister so requires, make good the damage to the satisfaction of the Minister or an authorized officer.

**(2)** Subsection (1) applies whether or not the person was acting with the permission of the Minister or an authorized officer or in pursuance of a permit granted to him under this Ordinance.

### **Penalties**

**15.** Where a person is guilty of an offence against section 4, 5, 7, 8, 11, 12 or 13, he is liable, on conviction, to a penalty not exceeding \$100.

### **Objects in public places**

**15A.** The Minister may, upon the application of a person, grant to the person a permit to place an object, other than an object of a kind referred to in paragraph 8 (a), in, over or across a public place.

### **Application for permit**

**15B.** An application for the grant of a permit to place an object in, over or across a public place—

- (a) shall be made in writing to the Minister and signed by or on behalf of the applicant;
- (b) shall specify the place in respect of which the permit is sought;
- (c) shall be accompanied by a plan clearly showing—

- (i) the location, boundaries and dimensions of the place in respect of which the permit is sought; and
- (ii) if it is not proposed to move the object whilst the permit is in force—the proposed position of the object in, over or across that place;
- (d) shall clearly indicate the nature of the object and give particulars of its design and size;
- (e) shall specify the use to which it is intended the object will be put;
- (f) shall specify the hours during which it is proposed the object will remain in, over or across the place;
- (g) shall give particulars of any measures proposed to be adopted in connexion with the use of the object to safeguard the health and provide for the safety, comfort and convenience of persons using the place or a place adjacent to or near the place; and
- (h) where installation or construction work is proposed to be carried out in or on the place for the purpose of placing the object in, over or across the place—
  - (i) shall specify the nature of the work;
  - (ii) shall give particulars of the methods to be employed in the execution of the work; and
  - (iii) shall give particulars of any measures proposed to be adopted in connexion with the work to protect the safety of persons using the place or a place adjacent to or near the place.

### **Grant or refusal of permit**

**15C. (1)** The Minister shall consider each application for a permit and shall—

- (a) approve of the grant to the applicant of the permit; or
- (b) refuse to grant the permit to the applicant.

**(2)** For the purpose of determining an application for a permit to place an object in, over or across a public place, the Minister shall have regard to—

- (a) whether the place is a suitable place in, over or across which to place the object;
- (b) whether the object will be structurally sufficient, safe and stable;
- (c) the interests of the public and, in particular—
  - (i) whether the object, placed in, over or across the place, would be likely to be to the benefit or detriment of persons using the place or a place adjacent to or near the place; and
  - (ii) whether adequate provision is proposed to be made in connexion with the use of the object to safeguard the health and provide for the safety, comfort and convenience of persons using the place or a place adjacent to or near the place;
- (d) the interests of persons carrying on business in the vicinity of the place and, in particular, the interests of a person carrying on, in the vicinity of the place, a business similar to the business, if any, carried on, in the vicinity of the place, by the applicant; and



- (e) where installation or construction work is proposed to be carried out in or on the place for the purpose of placing the object in, over or across the place—
  - (i) whether it is desirable to allow the work to be carried out in or on the place;
  - (ii) whether the work will be suitable for the purpose; and
  - (iii) whether adequate provision is proposed to be made in connexion with the work to protect the safety of persons using the place or a place adjacent to or near the place.

### **Permit may be subject to conditions**

**15D.** Where the Minister approves of the grant to an applicant of a permit to place an object in, over or across a public place, the Minister may grant the permit subject to such of the following conditions as he thinks fit:

- (a) that the object will be of a type or design specified by the Minister;
- (b) that the object will be properly maintained and will not be allowed to become structurally insufficient, unsafe or unstable;
- (c) that the holder of the permit will not allow the object, whether directly or indirectly, to adversely affect the health or safety of persons using the place or a place adjacent to or near the place;
- (d) that adequate provision will be made for the disposal of refuse and waste from, and for the drainage of, the place;
- (e) that, during the hours between sunset and sunrise that the object is in the place, the place will be illuminated in such a manner as to indicate clearly the object;
- (f) that the place will be fenced or enclosed in such a manner as to prevent persons being endangered or inconvenienced by the object;
- (g) that any installation or construction work to be carried out in or on the place for the purpose of placing the object in, over or across the place will be carried out in a proper, workmanlike and safe manner;
- (h) that the applicant will insure himself and keep himself insured against liability in respect of—
  - (i) death, bodily injury or illness; or
  - (ii) loss of, or damage to, property,occurring in connexion with the object.

### **Grant of permit**

**15E. (1)** Where the Minister approves of the grant to an applicant of a permit, the Minister shall notify the applicant in writing of the grant and of any conditions to which the permit is subject and shall, upon payment of the prescribed fee, issue the permit to the applicant.

**(2)** A permit granted under this Ordinance shall clearly identify the place in respect of which the permit is granted and shall specify—

- (a) the name and address of the person to whom the permit is granted;
- (b) the object permitted to be placed in, over or across the place;
- (c) the use to which the object may be put;

- (d) the hours during which the object may remain in, over or across the place;
- (e) the period for which the permit is granted; and
- (f) the conditions, if any, to which the permit is subject.

### **Cancellation of permit**

**15F.** The Minister may, upon any of the following grounds, cancel a permit authorizing a person to place an object in, over or across a public place:

- (a) that a permit was granted in error or in consequence of a false statement made or misleading information furnished by the holder of the permit;
- (b) that the holder of the permit has failed to take reasonable steps to prevent the object being used for a purpose other than the purpose specified in the permit;
- (c) that the holder of the permit has permitted the object to remain in the public place at a time other than a time allowed by the permit;
- (d) that the holder of the permit has failed to comply with a condition to which the permit is subject;
- (e) that the public place is no longer a suitable place to be the subject of a permit under this Ordinance;
- (f) that the object is not serving a purpose beneficial to the interests of the public;
- (g) that the object has resulted in, whether directly or indirectly, the interests of a person carrying on business in the vicinity of the place being adversely affected.

### **Review of decisions of Minister**

**15G. (1)** Application may be made to the Tribunal for a review of a decision of the Minister or his delegate—

- (a) refusing to grant a permit;
- (b) cancelling a permit; or
- (c) imposing a condition subject to which a permit is granted.

**(3)** In this section—

“Tribunal” means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975*.

### **Rights of holder of permit**

**15H. (1)** For the purpose of ensuring that an object to which a permit relates is used for the purpose specified in the permit, the holder of the permit may determine the persons who may make use of the object and any equipment or services provided in connexion with the object.

**(2)** Nothing in subsection (1) or in any other provision of this Ordinance prevents a place that is a public place for the purposes of a law in force in the Territory from continuing to be a public place for the purposes of that law.

### **Term of permit**

**15J.** A permit, unless sooner surrendered or cancelled, remains in force for such period, being a period not exceeding 12 months, as is specified in the permit.

### **Renewal of permit**

**15K. (1)** The Minister shall—

- (a) on an application for the renewal of a permit made before or after the expiration of the term of the permit; and
- (b) on payment of the prescribed fee,

subject to subsection (3), renew the permit by issuing to the applicant a renewal of the permit.

**(2)** Where the Minister renews a permit—

- (a) the permit as renewed continues in force for such period, being a period not exceeding 12 months, as is specified in the renewal; and
- (b) that period commences at the expiration of the period during which, but for its renewal, the permit would have been in force.

**(3)** The Minister shall not renew a permit where the object to which the permit related has been removed under subsection 15N (1).

### **Loss or destruction of permit**

**15L.** If the Minister is satisfied that a permit has been lost, defaced or destroyed, he may issue to the holder of the permit a certified copy of the permit and that copy is, for the purposes of this Ordinance, of the same effect as the permit.

### **Notice to remove object**

**15M. (1)** Where a permit expires or is surrendered or cancelled, the Minister shall, as soon as possible after the expiry, surrender or cancellation of the permit, as the case may be, if the object to which the permit related is still in, over or across the public place to which the permit related, by notice in writing given to the person who held the permit, require that person, within such period as is specified in the notice, being a period of not less than 14 days after the notice is given, to remove the object from the public place.

**(2)** Where a notice is given under subsection (1) following the expiry of a permit and the permit is subsequently renewed under subsection 15K (1), the notice ceases to have effect.

### **Removal of objects by the Territory**

**15N. (1)** Where a person fails to comply with a notice given to him under subsection 15M (1), the Minister shall cause the object to which the notice relates to be removed and placed in storage.

**(2)** Where a notice is given to a person under subsection 15M (1) and the object to which the notice relates is removed under subsection (1), the Minister shall give to the person a further notice stating—

- (a) the place in which the object is stored;
- (b) that the object will be delivered to the person at the place in which it is being stored if, within 28 days after the notice is given, the person pays to the Territory—
  - (i) the amount specified in the notice in respect of the costs and expenses incurred or to be incurred by the Commonwealth in making good any damage caused to the public place by the removal of the object;
  - (ii) the amount specified in the notice in respect of the costs and expenses incurred by the Commonwealth in removing the object; and

- (iii) an amount in respect of the costs and expenses of storage of the object, being an amount calculated in accordance with such rate as is specified in the notice; and
- (c) that, if, within the time specified in paragraph (b), the amounts referred to in that paragraph are not paid and the object removed from the place in which it is being stored—
  - (i) the ownership of the object shall be deemed, for all purposes, to vest in the Commonwealth; and
  - (ii) the object may be disposed of in such manner as the Minister directs.

**(3)** In relation to a notice given under subsection (2)—

- (a) the amount to be specified in the notice for the purpose of subparagraph (2) (b) (i) is the amount of the reasonable costs and expenses incurred or to be incurred by the Commonwealth in making good any damage caused to the public place by the removal of the object;
- (b) the amount to be specified in the notice for the purpose of subparagraph (2) (b) (ii) is the amount of the reasonable costs and expenses incurred by the Commonwealth in removing the object; and
- (c) the rate to be specified in the notice for the purpose of subparagraph (2) (b) (iii) is the rate necessary to cover the reasonable costs and expenses of storage of the object.

### **Disposal of objects by the Territory**

**15P. (1)** Where a person to whom a notice is given under subsection 15N (2) does not, within 28 days after the notice is given to him—

- (a) pay to the Territory the amounts referred to in the notice; and
- (b) remove the object to which the notice relates from the place in which it is being stored,

the ownership of the object shall be deemed, for all purposes, to vest in the Commonwealth and the object may be disposed of in such manner as the Minister directs.

**(2)** Where, in pursuance of subsection (1), an object is sold by the Commonwealth, the proceeds of the sale shall be applied—

- (a) in repaying to the Commonwealth—
  - (i) the amounts specified, for the purposes of subparagraphs 15N (2) (b) (i) and (ii), in the notice given under subsection 15N (2) in respect of the object;
  - (ii) the amount of the costs and expenses incurred by the Commonwealth in connexion with the storage of the object, being an amount calculated in accordance with the rate specified, for the purpose of subparagraph 15N (2) (b) (iii), in that notice; and
  - (iii) the amount of the reasonable costs and expenses incurred by the Commonwealth in connexion with the sale of the object; and
- (b) in payment of the balance, if any, to the person to whom the notices under subsections 15M (1) and 15N (2) were given.

## Manner of giving notices

**15Q.** A notice referred to in subsection 15M (1) or subsection 15N (2) may be given by post.

## Change of address

**15R. (1)** Where the name or address of the holder of a permit is changed, the holder shall forthwith furnish to the Minister notice in writing of the change and forward the permit to the Minister.

Penalty: \$20.

**(2)** The Minister shall, as soon as practicable after receipt of the permit, enter the particulars of the change on the permit and return it to the holder.

## Regulations

**16.** The Minister may make regulations, not inconsistent with this Ordinance, prescribing all the matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

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## NOTES

1. This reprint sets out the provisions of the *Roads and Public Places Ordinance 1937*, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The provisions of the *Roads and Public Places Ordinance 1937* as shown in this reprint comprise Ordinance No. 24, 1937 amended as indicated in the Tables below.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

**Table of Ordinances**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Roads and Public Places Ordinance 1937</i>	24, 1937	16 Dec 1937	16 Dec 1937	
<i>Ordinances Revision Ordinance 1959</i>	21, 1959	23 Dec 1959	31 Dec 1959	—
<i>Ordinances Revision (Decimal Currency) Ordinance 1966</i>	19, 1966	23 Dec 1966	23 Dec 1966	—
<i>Roads and Public Places (Amendment) Ordinance 1976</i>	72, 1976	30 Dec 1976	30 Dec 1976	—
<i>Roads and Public Places (Amendment) Ordinance 1983</i>	15, 1983	27 July 1983	10 Aug 1983 (see <i>Gazette</i> 1983, No. S172)	—
<i>Roads and Public Places (Amendment) Ordinance 1987</i>	64, 1987	6 Nov 1987	6 Nov 1987	—
<i>National Land Ordinance 1989</i>	39, 1989	10 May 1989	1 May 1989 (see s. 2 and <i>Gazette</i> 1989, No. S164)	—

NOTES—continued

Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Provision	How affected
S. 2 .....	am. No. 21, 1959; No. 72, 1976; No. 39, 1989
S. 8 .....	am. No. 72, 1976
S. 9 .....	am. No. 72, 1976; No. 15, 1983
S. 9A .....	ad. No. 15, 1983
S. 10 .....	am. No. 19, 1966; No. 72, 1976
S. 11 .....	am. No. 38, 1989
S. 12 .....	am. No. 72, 1976
S. 14 .....	am. No. 72, 1976
S. 15 .....	am. No. 19, 1966 rs. No. 72, 1976
Ss. 15A-15F .....	ad. No. 72, 1976
S. 15G .....	ad. No. 72, 1976 am. No. 39, 1989
Ss. 15H-15M .....	ad. No. 72, 1976
Ss. 15N-15R .....	ad. No. 72, 1976
Ss. 15S, 15T .....	ad. No. 64, 1987 rep. No. 39, 1989

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# AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

## **TRESPASS ON COMMONWEALTH LANDS ORDINANCE 1932**

- as in force immediately before Self-Government day (11 May 1989); and
  - as modified by the *National Land Ordinance 1989*;
- and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

### **TABLE OF PROVISIONS**

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### **THE SCHEDULE REPEALED ORDINANCES**

## AUSTRALIAN CAPITAL TERRITORY

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*Provisions of the*

### **TRESPASS ON COMMONWEALTH LANDS ORDINANCE 1932<sup>1</sup>**

- as in force immediately before Self-Government day (11 May 1989); and
- as modified by the *National Land Ordinance 1989*;  
and having effect with respect to National Land by virtue of the *National Land Ordinance 1989*

An Ordinance relating to Trespass on Lands belonging to, or in the occupation of, the Commonwealth within the Territory

#### **Short title**

1. This Ordinance may be cited as the *Trespass on Commonwealth Lands Ordinance 1932*.<sup>2</sup>

#### **Repeal**

2. The Ordinances set out in the Schedule to this Ordinance are repealed.

#### **Interpretation**

3. In this Ordinance, unless the contrary intention appears—

“animal” means any horse, mare, gelding, colt, filly, foal, ass, mule, bull, cow, ox, heifer, steer, calf, ram, ewe, wether, sheep, lamb, goat or pig;

“carriageway”, in relation to a public street, has the same meaning as in the Motor Traffic Act;

“off-street parking area” has the same meaning as in the Motor Traffic Act;

“public street” has the same meaning as in the Motor Traffic Act;

“road” means any street, road, lane, thoroughfare, or footpath, open to, or used by, the public;

“the Motor Traffic Act” means the *Motor Traffic Act 1936* of the Territory;

“vehicle” has the same meaning as in the Motor Traffic Act.

#### **Appointment of Inspectors**

3A. The Minister may appoint such Inspectors as he considers necessary for carrying out this Ordinance.

#### **Trespass on Commonwealth lands**

4. (1) The Minister may cause to be placed on any lands belonging to, or in the occupation of, the Commonwealth a notice prohibiting trespass thereon.

(2) Any person who, without lawful excuse (proof whereof shall lie upon him) trespasses or goes upon—

(a) any land belonging to, or in the occupation of the Commonwealth—



- (i) as to which any notice is posted thereon prohibiting trespass; or
  - (ii) which is in the City Area; or
- (b) any garden, plantation or afforestation area belonging to, maintained by, or under the control of, the Commonwealth;

shall be guilty of an offence.

Penalty: Twenty dollars.

#### **Animals straying etc. on Commonwealth lands**

**4A. (1)** The owner of any animal which is found straying, wandering, or at large on any road or on any unleased land belonging to the Commonwealth shall be guilty of an offence.

Penalty: Twenty dollars.

**(2)** For the purposes of this section the owner of an animal includes—

- (a) any person who has the care, custody or control of the animal; and
- (b) any person on whose premises the animal is kept or agisted.

#### **Grazing stock on Commonwealth land in City Area**

**4B.** Any person who turns loose, or suffers any animal belonging to him or under his charge to be tethered or depastured, on any road or unleased land belonging to the Commonwealth in the City Area shall be guilty of an offence.

Penalty: Twenty dollars.

#### **Damage to fences**

**5.** Any person who without lawful excuse (proof whereof shall lie upon him) damages any fence shall be guilty of an offence.

Penalty: Twenty dollars.

#### **Leaving gates open**

**6.** Any person who without lawful excuse (proof whereof shall lie upon him) leaves open any gate—

- (a) upon which the words “Shut gate—By order, the Minister” or words to the like effect appear; or
- (b) which is adjacent to any unleased land belonging to the Commonwealth or any road, thereby permitting or causing any animal to trespass on such land or road,

shall be guilty of an offence.

Penalty: Twenty dollars.

#### **Damaging trees etc.**

**7.** Any person who, without lawful excuse (proof whereof shall lie upon him), damages or destroys any trees, plant, garden, plantation or afforestation area belonging to, maintained by or under the control of the Commonwealth, shall be guilty of an offence.

Penalty: Twenty dollars.

### **Persons authorised to prevent trespassing etc.**

**8.** An Inspector or any person thereto authorized in writing by the Minister may, if need be by force and with such assistance as he deems necessary—

- (a) prevent any person, animal or vehicle from trespassing or going upon any land, garden, plantation or afforestation area referred to in subsection (2) of section four of this Ordinance without lawful excuse;
- (b) prevent any person from damaging or destroying any tree, plant, garden, plantation or afforestation area referred to in section seven of this Ordinance; and
- (c) remove any person found so trespassing or going upon any such land.

### **Camping etc. on unleased Commonwealth land in City Area**

**8A. (1)** In this section—

“immobilized vehicle” means a vehicle that has been rendered incapable, whether or not by the removal of parts, of being moved as a vehicle;

“structure” includes a tent, booth, stall and an immobilized vehicle;

“unleased land” means unleased land that—

- (a) belongs to the Commonwealth;
- (b) is within the City Area; and
- (c) is not within an area for the time being declared by the Minister, by notice published in the *Gazette*, to be, for the purposes of this Ordinance, a camping area.

**(2)** A person shall not—

- (a) camp, whether under cover or in the open, on unleased land;
- (b) erect a structure on unleased land; or
- (c) occupy or be in a structure on unleased land, not being a structure that belongs to the Commonwealth and is for the time being open to the public,

unless—

- (d) that land is land specified in a permit issued under the next succeeding section, the person is the person to whom the permit has been granted or is a person to whom the permit is expressed to apply and the permit is in force; or
- (e) that person camps, or erects, occupies or is in a structure, on that land in the performance of his duties as—
  - (i) an Australian public servant;
  - (ii) a Territory public servant; or
  - (iii) an employee of an authority of the Commonwealth or the Territory;

or in discharging an obligation owed by that person or any other person to the Commonwealth, the Territory or such an authority.

Penalty: Fifty dollars.

**(3)** A person shall not park or leave a vehicle on unleased land that is within an area of unleased land that is specified by the Minister, by notice in the *Gazette*, to be an area of unleased land to which this subsection applies unless—

- (a) that land is specified in a permit issued under the next succeeding section, the person is the person to whom the permit has been issued or a person to whom the permit is expressed to apply and the permit is in force;
- (b) that person parks or leaves the vehicle on part of the carriageway of a public street or in an off-street parking area, and the parking or leaving does not constitute an offence against any other law in force in the Territory;
- (c) that person parks or leaves the vehicle on that land in the performance of his duties as—
  - (i) an Australian public servant;
  - (ii) a Territory public servant; or
  - (iii) an employee of an authority of the Commonwealth or the Territory;or in discharging an obligation owed by that person or any other person to the Commonwealth, the Territory or such an authority;
- (d) the parking or the leaving of the vehicle on that land could not have been avoided by any reasonable efforts on the part of that person.

Penalty: Fifty dollars.

**(4)** A person who has been convicted of an offence against either of the last two preceding subsections is guilty of a further offence if, after having been charged with the first-mentioned offence, he has continued to act in contravention of that subsection, and is liable, upon conviction, to a penalty of not more than Ten dollars for each day after the day on which he was charged with the first-mentioned offence during which the contravention so continues.

**(5)** Where an Inspector appointed under this Ordinance or a member of the Police Force of the Territory has requested a person who is in occupation of, or has apparent control of—

- (a) a structure that is on unleased land; or
- (b) a vehicle that is on unleased land that is within an area of unleased land to which subsection (3) of this section applies,

to remove the structure and all articles in, about, attached to, or apparently being used in connexion with, the structure, or to remove the vehicle, to a place that is not unleased land and—

- (c) immediate steps are not taken to comply with the request; or
- (d) the structure and the articles or the vehicle, as the case requires, are not removed within a reasonable time after the making of the request,

an Inspector appointed under this Ordinance or a member of the Police Force of the Territory may remove the structure and all articles in, about, attached to, or apparently being used in connexion with, the structure, or the vehicle, as the case requires.

**(6)** Where—

- (a) a structure is on unleased land and, for a period of not less than two hours—
  - (i) the structure has remained unoccupied; and

- (ii) there has been no person in apparent control of the structure; or
- (b) a vehicle is on unleased land that is within an area of unleased land to which subsection (3) of this section applies and, for a period of not less than two hours, there has been no person in apparent control of the vehicle,

an Inspector appointed under this Ordinance or a member of the Police Force of the Territory may remove the structure and all articles in, about, attached to, or apparently being used in connexion with, the structure, or the vehicle, as the case requires.

(7) A structure, article or vehicle removed by an Inspector or a member of the Police Force under either of the last two preceding subsections shall be retained in such custody as the Commissioner of Police directs.

(8) Where a structure, article or vehicle is retained in accordance with the last preceding subsection, a person who, but for that subsection, would be entitled to the custody of the structure, article or vehicle may request the Commissioner of Police to deliver up that article to him, and, subject to the next succeeding subsection, the Commissioner of Police shall, as soon as practicable, comply with that request.

(9) Where a request is made under the last preceding subsection for the delivery to a person of an article retained under subsection (7) of this section and that article is required by the prosecution to be tendered in evidence in proceedings for an offence against this section, the Commissioner of Police shall give to the person making the request notice in writing to that effect specifying the proceedings in relation to which the article is so required, and may retain that article until the conclusion of the proceedings specified in the notice.

(10) If, after the expiration of a period of three months after the date on which a structure, article or vehicle has been removed from unleased land in pursuance of subsection (5) or subsection (6) of this section, no person who, but for subsection (7) of this section, would be entitled to the custody of the structure, article or vehicle has made a request under the last preceding subsection, the Commissioner of Police shall deal with that structure, article or vehicle in accordance with section twenty-six of the Police Act.

### **Permits to occupy unleased land**

**8B. (1)** An officer of the Department authorized in writing by the Minister may, on an application by a person who wishes to conduct a festival, show, fair, circus or carnival, grant to that person a permit to occupy for that purpose a specified area of unleased land belonging to the Commonwealth that is in the City Area, and the permit applies to that person and to all other persons to whom the permit is expressed to apply.

(2) A permit shall be in force for such period, and subject to such conditions, as are specified in the permit.

### **Evidence**

**8C. (1)** An officer of the Department authorized in writing by the Minister may, by instrument in writing under his hand, certify that land described in the instrument or by reference to a plan on or annexed to the instrument is unleased land that—

- (a) belongs to the Commonwealth;
- (b) is within the City Area; and
- (c) is not within an area for the time being declared by the Minister, by notice published in the *Gazette*, to be, for the purposes of this Ordinance, a camping area.

(2) In proceedings for an offence against this Ordinance, a document that purports to be an instrument referred to in the last preceding subsection shall, unless the contrary is proved, be deemed to be such an instrument and is evidence of the matters stated in the instrument.

**Persons reasonably suspected to give name and address**

9. (1) A member of the Police Force of the Territory, or an Inspector, or any forest overseer employed by the Commonwealth or any person thereto authorized in writing by the Minister, may require any person reasonably suspected of having committed, or of being about to commit an offence against this Ordinance to give his name in full and place of abode.

(2) Any person who, after being so required and on production of the necessary authority, refuses or fails to give his real name or place of abode, shall be guilty of an offence.

Penalty: Twenty dollars.

(3) Any such member of the Police Force, any such Inspector or any such overseer or person may arrest without warrant any person reasonably suspected of having acted in contravention of this section, and may keep him in custody until he can be taken before a Magistrates Court to be tried for the offence of which he is suspected.

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**THE SCHEDULE**

Section 2

*Trespass on Commonwealth Lands Ordinance 1922 (No. 1 of 1922)*  
*Trespass on Commonwealth Lands Ordinance 1923 (No. 2 of 1923)*  
*Trespass on Commonwealth Lands Ordinance 1923 (No. 2) (No. 9 of 1923)*  
*Trespass on Commonwealth Lands Ordinance 1924 (No. 2 of 1924)*  
*Trespass on Commonwealth Lands Ordinance 1925 (No. 7 of 1925)*  
*Trespass on Commonwealth Lands Ordinance 1926 (No. 20 of 1926)*  
*Trespass on Commonwealth Lands Ordinance 1927 (No. 18 of 1927)*  
*Trespass on Commonwealth Lands Ordinance 1928 (No. 3 of 1928)*

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## NOTES

1. This reprint sets out the provisions of the *Trespass on Commonwealth Lands Ordinance 1932*, as in force immediately before Self-Government day (11 May 1989). Those provisions have effect with respect to National Land on and after Self-Government day by virtue of the *National Land Ordinance 1989*.
2. The provisions of the *Trespass on Commonwealth Lands Ordinance 1932* as shown in this reprint comprise Ordinance No. 20, 1932 amended as indicated in the Tables below.

The *Reserved Laws (Interpretation) Ordinance 1989* (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments (including provisions having effect by virtue of the *National Land Ordinance 1989*).

### Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Trespass on Commonwealth Lands Ordinance 1932</i>	20, 1932	10 Nov 1932	10 Nov 1932	
<i>Trespass on Commonwealth Lands Ordinance 1937</i>	10, 1937	22 July 1937	22 July 1937	—
<i>Trespass on Commonwealth Lands Ordinance 1939</i>	6, 1939	10 Aug 1939	10 Aug 1939	—
<i>Trespass on Commonwealth Lands Ordinance 1940</i>	15, 1940	11 July 1940	11 July 1940	—
<i>Trespass on Commonwealth Lands Ordinance 1942</i>	20, 1942	10 Dec 1942	10 Dec 1942	—
<i>Trespass on Commonwealth Lands Ordinance 1943</i>	6, 1943	13 May 1943	27 May 1944	—
<i>Trespass on Commonwealth Lands Ordinance 1944</i>	2, 1944	3 Feb 1944	3 Feb 1944	—
<i>Trespass on Commonwealth Lands Ordinance (No. 2) 1944</i>	5, 1944	23 Mar 1944	3 Feb 1944	(see s. 2)
<i>Ordinances Revision (Decimal Currency) Ordinance 1966</i>	19, 1966	23 Dec 1966	23 Dec 1966	—
<i>Trespass on Commonwealth Lands Ordinance 1972</i>	20, 1972	20 July 1972	20 July 1972	—
<i>Trespass on Commonwealth Lands Ordinance 1973</i> (a)	8, 1973	15 Mar 1973	15 Mar 1973	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>National Land Ordinance 1989</i>	39, 1989	10 May 1989	11 May 1989 (see s. 2 and <i>Gazette</i> 1989, No. S164)	S. 5 (10)

- (a) The *Trespass on Commonwealth Lands Ordinance 1973* was disallowed by the Senate on 7 June 1973 and the amendments are not incorporated in this reprint.

NOTES—continued

Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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Provision	How affected
S. 3.....	am. No. 15, 1940; No. 20, 1972; No. 39, 1989
S. 3A.....	ad. No. 6, 1943
S. 3B.....	ad. No. 6, 1943 rs. No. 2, 1944 am. No. 5, 1944; No. 19, 1966 rep. No. 39, 1989
S. 3C.....	ad. No. 6, 1943 am. No. 2, 1944; No. 19, 1966 rep. No. 39, 1989
S. 4.....	am. No. 15, 1940; No. 19, 1966; No. 39, 1989
S. 4A.....	ad. No. 10, 1937 am. No. 6, 1939; No. 19, 1966
S. 4B.....	ad. No. 20, 1942 am. No. 19, 1966
S. 5.....	am. No. 19, 1966
S. 6.....	am. No. 19, 1966; No. 39, 1989
S. 7.....	am. No. 15, 1940; No. 19, 1966
S. 8.....	am. No. 15, 1940; No. 6, 1943
Ss. 8A-8C.....	ad. No. 20, 1972 am. No. 39, 1989
S. 9.....	am. No. 6, 1943; No. 19, 1966; No. 67, 1985

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