

AUSTRALIAN CAPITAL TERRITORY

National Land Ordinance 1989

No. 39 of 1989

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 9 May 1989.

BILL HAYDEN
Governor-General

By His Excellency's Command,

CLYDE HOLDING
Minister of State for the Arts
and Territories

An Ordinance relating to National Land

Short title

1. This Ordinance may be cited as the *National Land Ordinance 1989*.¹

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*;

“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*;

“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. The Minister shall manage National Land, on behalf of the Commonwealth, subject to the applied provisions.

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
 - (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
- (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.

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.

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.

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 “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.”.

SCHEDULE—continued**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.”.

Subsection 11A (11)—

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

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*”.

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:

SCHEDULE—continued

“(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,”.

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*”.

SCHEDULE—continued**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)—

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;

SCHEDULE—continued

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.

SCHEDULE—continued
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;”.

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”.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 10 May 1989.