

EXPLANATORY STATEMENT

Issued by the Authority of the Assistant Minister for Infrastructure and Regional Development

Seat of Government (Administration) Act 1910

National Land (Road Transport) Ordinance 2014

Overview and background

Section 12(1)(d) of the *Seat of Government (Administration) Act 1910* (Act) provides that the Governor-General may make ordinances for the peace, order and good government of the Territory with respect to National Land as defined by the *Australian Capital Territory (Planning and Land Management) Act 1988*.

The *National Land (Road Transport) Ordinance 2014* (Ordinance) is made under section 12(1)(d) of the Act. The purpose of the Ordinance is to apply to National Land the laws of the Australian Capital Territory (ACT) with respect to road transport and parking. In particular, the Ordinance provides a legislative framework for the management and enforcement of pay parking on National Land.

Previously, under the *National Land (Parking) Ordinance 1994*, ACT laws with respect to road transport and parking were applied to National Land. However, the National Capital Authority (NCA) as the responsible agency for National Land, was not empowered to implement, administer and enforce pay parking on National Land.

The Ordinance modifies the application of the ACT road transport and parking laws to permit the NCA Chief Executive to be responsible for the administration of pay parking.

Under the *Australian Capital Territory (Planning and Land Management) Act 1988* an ordinance has no effect to the extent that it is inconsistent with the National Capital Plan (Plan). The Ordinance is not inconsistent with the Plan.

The Ordinance commenced on the day after it was registered.

The Ordinance is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

In preparing the Ordinance, the NCA undertook consultation with the relevant ACT agencies as well as with members of the community who are involved with and/or affected by the Ordinance.

Specifically, the NCA invited public comment on the mix of long stay and short stay car parks on National Land. The aim of the consultation was to determine the optimal mix of short stay and long stay spaces within the overall pay parking arrangements. The consultation

process ran for 6 weeks, from 15 May 2013 to 26 June 2013. The consultation process included:

- (a) Wednesday 15 May 2013 – public comment invited on the NCA’s web site;
- (b) Wednesday 15 May 2013 – notice published in The Canberra Times;
- (c) Friday 17 May 2013 – discussion on retail services and amenities opened;
- (d) Thursday 30 May 2013 – public drop-in session held at NCA offices; and
- (e) Wednesday 26 June 2013 – period for written submissions concluded.

The *Report on Consultation – Parking Management on National Land – Allocation of car parks for short stay and long stay (July 2013)* summarised the results of the consultation.

Detailed provision by provision description of the Ordinance

Part 1 – Preliminary

Section 1 - Name of Ordinance

This section provides that the title of the Ordinance is the *National Land (Road Transport) Ordinance 2014*.

Section 2 - Commencement

This section provides for the Ordinance to commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the Ordinance is made under the *Seat of Government (Administration) Act 1910*.

Section 4 - Simplified outline of this Ordinance

This section provides an outline of the Ordinance.

The Ordinance applies ACT laws relating to road transport to National Land so far as they are not inconsistent with the Ordinance or a rule under the Ordinance.

However, the NCA Chief Executive, rather than the ACT, is responsible for administering certain laws including in respect of pay parking in their application to National Land. To provide for this arrangement, the Ordinance modifies the application of certain ACT laws as follows:

- (a) certain laws relating to pay parking set out in Schedule 1 and any other provisions which constitute ‘ACT pay parking legislation’ within the meaning of the Ordinance are modified in their application to National Land. These modifications permit the NCA Chief Executive to be solely responsible for administering these pay parking laws in their application to National Land; and

- (b) the laws supporting the administration and implementation of pay parking as set out in Schedule 2 and any other provisions which constitute ‘ACT pay parking support legislation’ within the meaning of the Ordinance are modified in their application to National Land. These modifications permit the NCA Chief Executive and the ACT to administer ACT laws which support pay parking in their application to National Land.

A rule made under the Ordinance may also modify the application to National Land of any ACT law relating to road transport.

Section 5 - Definitions

This section provides the definitions required for the purposes of the Ordinance.

ACT means the Australian Capital Territory.

ACT law means:

- (a) a law of the ACT; or
- (b) a provision of that law; or
- (c) an instrument, or a provision of an instrument, that:
 - (i) is in force under, or incorporated into, that law; or
 - (ii) is incorporated into an instrument to which subparagraph (i) applies.

ACT paid parking legislation means the following:

- (a) the ACT laws mentioned in Schedule 1;
- (b) any other ACT law that is declared by rule to be part of the ACT pay parking legislation;
- (c) any ACT law so far as it gives meaning to, or limits or extends the meaning of, a term used in the laws mentioned in paragraphs (a) and (b);

but does not include an ACT law to which paragraph (a) applies that is declared by rule not to be part of the ACT pay parking legislation.

Note: An example of paragraph (c) is section 133 of the *Legislation Act 2001* (ACT) which explains the meaning of the term **penalty unit**.

ACT paid parking support legislation means the following:

- (a) the ACT laws mentioned in Schedule 2;
- (b) any other ACT law that is declared by rule to be part of the ACT pay parking support legislation;
- (c) any ACT law so far as it gives meaning to, or limits or extends the meaning of, a term used in the laws mentioned in paragraphs (a) and (b);

but does not include an ACT law to which paragraph (a) applies that is declared by rule not to be part of the ACT pay parking support legislation.

ACT road transport legislation means the following:

- (a) the ACT laws that form part of the road transport legislation within the meaning of section 6 of the Road Transport (General) Act 1999 (ACT);
- (b) any other ACT law that is declared by rule to be part of the ACT road transport legislation;

but does not include an ACT law to which paragraph (a) applies that is declared by rule not to be part of the ACT road transport legislation.

authorised person means:

- (a) a person who holds an appointment under section 10; or
- (b) a person prescribed by rule.

National Land means land that is National Land under the *Australian Capital Territory (Planning and Land Management) Act 1988*.

NCA Chief Executive means the Chief Executive of the National Capital Authority under the *Australian Capital Territory (Planning and Land Management) Act 1988*.

Ordinance includes a provision of this Ordinance.

rule means a rule under this Ordinance, and includes a provision of a rule.

Section 6 – Application of Ordinance

This section provides that the Ordinance applies to National Land. However, the Ordinance does not apply to particular National Land if a rule declares that the Ordinance does not apply to that land.

Part 2—Road transport on National Land

Section 7 - ACT road transport legislation applies to National Land

This section enables the Ordinance to apply all ACT road transport legislation to National Land, so far as it is not inconsistent with the Ordinance or a rule. This means that the ACT road transport legislation applies to the extent it is not inconsistent with the terms of the Ordinance and any rules made under the Ordinance. Provisions of the Ordinance which will affect the application of the ACT road transport legislation include:

- (a) section 8 of the Ordinance, which modifies definitions used in the ACT pay parking legislation and ACT pay parking support legislation in their application to National Land, such as ‘road transport authority’. This ensures that the ACT road transport legislation applies subject to the modifications set out in the Ordinance;
- (b) section 9, which provides for the NCA Chief Executive to enter into arrangements with the ACT in relation to the administration of the ACT road transport legislation in its application to National Land. This empowers the NCA Chief Executive to enter into arrangements with the ACT to administer the road transport legislation as it applies to National Land;

- (c) section 10, which provides for the NCA Chief Executive to appoint authorised persons for the purposes of the Ordinance. This empowers the NCA Chief Executive to appoint authorised persons under the ACT road transport legislation as it applies to National Land; and
- (d) section 11, which provides for the Minister to make rules prescribing certain matters. This ensures that the ACT road transport legislation will apply to the extent it is not inconsistent with a rule made under this section.

This framework allows uniformity in the regulation of pay parking across the ACT by applying existing ACT laws (subject to permitted modification), whilst permitting the NCA Chief Executive to administer pay parking on National Land.

Section 7 does not limit the application of ACT road transport legislation to land that is not National Land.

Section 8 - NCA Chief Executive to administer ACT pay parking legislation applying on National Land

This section modifies the ACT pay parking legislation and ACT pay parking support legislation in order to provide for the NCA Chief Executive to be exclusively responsible for administering the ACT pay parking legislation and to permit the NCA Chief Executive and the ACT to administer the ACT pay parking support legislation.

Subsection (1) provides that the NCA Chief Executive is responsible for administering the ACT pay parking legislation.

To achieve this:

- (a) the application of the ACT pay parking legislation is modified as follows:
 - (i) a reference to the road transport authority is a reference to the NCA Chief Executive. This ensures that the NCA Chief Executive is exclusively permitted to exercise the power of a road transport authority in respect of the ACT pay parking legislation;
 - (ii) a reference to an authorised person is a reference to an authorised person as defined in section 5. This ensures that authorised persons for the purposes of the Ordinance are exclusively permitted to exercise the powers of an authorised person under the ACT pay parking legislation as applied to National Land;

These modifications ensure that the NCA Chief Executive is exclusively responsible for administering the ACT pay parking legislation as applied to National Land.

- (b) the application of the ACT pay parking support legislation is modified as follows:
 - (i) a reference to the road transport authority, or administering authority, includes a reference to the NCA Chief Executive. This ensures that the NCA Chief Executive and the ACT are permitted to exercise the

powers of the road transport authority in respect of ACT road transport legislation applied to National Land. This also ensures that the NCA Chief Executive and the ACT may be the administering authority for offences against the ACT road transport legislation as applied to National Land;

- (ii) a reference to an authorised person includes a reference to an authorised person as defined in section 5. This ensures that authorised persons for the purposes of the Ordinance are also permitted to exercise the powers of an authorised person under the ACT pay parking support legislation as applied to National Land;
- (iii) a reference to the Minister includes a reference to the Minister responsible for administering this Ordinance. This ensures that the Minister responsible for administering the Ordinance is also able to exercise the powers given to the ACT Minister, for example, the power to set fees and charges; and
- (iv) a reference to a director-general includes a reference to the Secretary of the Department. This ensures that the Secretary of the Department is also able to exercise any powers given to the ACT director-general.

These modifications ensure that the NCA Chief Executive and the ACT are permitted to administer the ACT pay parking support legislation as applied to National Land.

- (c) any other modifications to the ACT pay parking legislation or the ACT pay parking support legislation that are prescribed by rule are taken to be made. This ensures that the application of the ACT pay parking legislation and the ACT pay parking support legislation may be modified by rule.

Section 9 - Administrative arrangements with ACT

This section provides for the NCA Chief Executive to enter into arrangements with the ACT in relation to the administration of the ACT road transport legislation in its application to National Land. An arrangement may provide for the exercise of powers or the performance of functions or duties by the ACT (or its authorities, officers or employees) on behalf of the NCA Chief Executive. For example, an arrangement under section 9 of the Ordinance may be used to provide for the ACT to administer certain provisions of the ACT pay parking legislation which would otherwise be the exclusive responsibility of the NCA Chief Executive. An arrangement under section 9 may also be used to define the responsibilities of the ACT and the NCA Chief Executive in respect of the administration of the ACT pay parking support legislation.

Part 3—Miscellaneous

Section 10 - Authorised people

This section permits the NCA Chief Executive to appoint a person to be an authorised person for this Ordinance. A person authorised under this section will also be an authorised person

for the purposes of the ACT pay parking legislation and ACT pay parking support legislation as applied to National Land in accordance with section 8 of the Ordinance.

Section 10 requires that a person must not be appointed under subsection (1) unless:

- (a) the person is an Australian citizen or a permanent resident of Australia; and
- (b) the NCA Chief Executive is satisfied that the person is a suitable person to be appointed, having regard to:
 - (i) whether the person has any criminal convictions; and
 - (ii) the person's employment record; and
 - (iii) the person has satisfactorily completed adequate training to exercise the powers of an authorised person that are proposed to be given to the person.

Section 11 - Rule making power

This section empowers the Minister to make rules in respect of a range of matters under the Ordinance and in respect of the ACT road transport legislation as applied to National Land under section 7 of the Ordinance.

Subsection (1) permits the Minister to make rules prescribing matters:

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

Under subsection (2), a rule may (without limiting subsection (1)) declare:

- (a) National Land to be a road or road related area; or
- (b) that a provision of the ACT road transport legislation:
 - (i) applies to National Land with stated modifications; or
 - (ii) does not apply to National Land.

Subsection (2) provides the Minister with power to make rules to modify the application of the ACT road transport legislation, including the application of ACT pay parking legislation and ACT pay parking support legislation. For example, the Minister is empowered by section 11 to:

- (a) include or exclude ACT road transport legislation from being ACT pay parking legislation or ACT pay parking support legislation;
- (b) modify the application of the ACT pay parking legislation or ACT pay parking support legislation to National Land; and

- (c) modify the application of other ACT road transport legislation in its application to National Land.

Subsection (3) requires that a rule made under the Ordinance be registered as a legislative instrument under the *Legislative Instruments Act 2003*.

Schedule 1—ACT pay parking legislation

This schedule sets out the provisions of the ACT road transport legislation which are the responsibility of the NCA Chief Executive and are to be modified in accordance with section 8(2)(a) of the Ordinance.

Only provisions which specifically require modification to provide for administration by the NCA Chief Executive are included in Schedule 1. ACT road transport legislation of general application to National Land will otherwise apply under section 7 of the Ordinance.

Schedule 2—ACT pay parking support legislation

This schedule sets out the provisions of the ACT road transport legislation which support the administration of pay parking by the NCA Chief Executive and are to be modified in accordance with section 8(2)(b) of the Ordinance to permit administration by the NCA Chief Executive and the ACT.

Only provisions which specifically require modification are included in Schedule 2. ACT road transport legislation of general application to National Land will otherwise apply under section 7 of the Ordinance.

Regulation Impact Statement

The Office of Best Practice Regulation advised a Regulation Impact Statement is not required.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Land (Road Transport) Ordinance 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Jamie Briggs

Assistant Minister for Infrastructure and Regional Development