

**EXPLANATORY STATEMENT – Australian Capital Territory National Land
Amendment (Diplomatic Leases) Ordinance 2015**

Ordinance No. 8, 2015

Overview and Background

The *Seat of Government (Administration) Act 1910* provides a legal framework for the Australian Capital Territory, and a body of law based on New South Wales laws. The *Seat of Government (Administration) Act 1910* provided that from 1911, new laws would derive from Ordinances made by the Governor-General and Acts of the Commonwealth Parliament.

Subsection 12(1)(d) of the *Seat of Government (Administration) Act 1910* 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 *Australian Capital Territory National Land Amendment (Diplomatic Leases) Ordinance 2015* (the Ordinance) is made under the *Seat of Government (Administration) Act 1910*.

The purpose of the Ordinance is to amend the *National Land Ordinance 1989* to modify the *Leases (Special Purposes) Ordinance 1925*, to allow for flexible diplomatic leasing arrangements in the Australian Capital Territory. The types of leasing arrangements available under the Ordinance include the lease of a single site to a country, co-location of two or more countries on a single site, sub-division and the use of commercial building spaces.

The Ordinance does not affect the validity of existing leases granted to the Government of a foreign country under the previous *Leases (Special Purposes) Ordinance 1925*, or the ability of those existing leases to be used for the diplomatic, consular or official purpose of the Government of another foreign country if such use is specified in a lease.

The Ordinance is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The *Seat of Government (Administration) Act 1910* does not specify any conditions that need to be met before the power to make the Ordinance may be exercised.

The Ordinance commenced on the day after it was registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

The Ordinance 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*.

The Ordinance is made to allow for flexible diplomatic leasing arrangements in the Australian Capital Territory and does not engage any of the applicable rights or freedoms. The Ordinance is compatible with human rights as it does not raise any human rights issues.

Consultation

In preparing the Ordinance, the Department of Infrastructure and Regional Development undertook consultations with Commonwealth agencies and members of the diplomatic community.

Draft copies of the Ordinance were sent to the Australian Government Solicitor, the National Capital Authority and Department of Foreign Affairs and Trade for comment.

Following circulation of the final draft, no agencies or organisations consulted objected to the content of the ordinance.

Detailed Provision-by-Provision Description of the Ordinance

Section 1 – Name of Regulation

This section provides that the title of this Ordinance is *Australian Capital Territory National Land Amendment (Diplomatic Leases) Ordinance 2015*.

Section 2 – Commencement

The date of commencement is the day after the Ordinance is registered on the Federal Register of Legislative Instruments.

Section 3 - Authority

This section identifies the authority under which the Ordinance is made; the Ordinance is made under the *Seat of Government (Administration) Act 1910*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Main Amendments

National Land Ordinance 1989

Item 1 – Schedule (after modification of Section 2 of the *Leases (Special Purposes) Ordinance 1925*)

This item repeals subsection 3(2) of the *Leases (Special Purposes) Ordinance 1925* and substitutes it with the new subsection 3(2) of the Ordinance in relation to the Minister's ability to grant leases of National Land. This item provides that the Minister may grant to the Government of a foreign country, or to the accredited agent of that Government, a lease of land that is National Land for the diplomatic, consular, or official residence of that Government, or of the Governments of another foreign country.

A lease of land granted by the Minister under this new subsection includes lease terms relating to subdivision, subleasing and co-location of two or more Governments on the same site. Leases of land granted under this subsection may relate to the whole or part of premises that would otherwise be used for business or residential purposes.

Part 2 – Application and Transitional Provisions

National Land Ordinance 1989

Item 2 – Effect of amendments made by *Australian Capital Territory National Land Amendment (Diplomatic Leases) Ordinance 2015*

This item inserts a new Section 9 into the *National land Ordinance 1989* which provides that new subsection 3(2) of the Ordinance applies to leases of National Land that were granted under the *Leases (Special Purposes) Ordinance 1925*.

New Section 9 also provides that amendments made by the Ordinance do not affect the validity of existing leases granted to the Government of a foreign country under the previous *Leases (Special Purposes) Ordinance 1925*, or the ability of those existing leases to be used for the diplomatic, consular or official purpose of the Government of another foreign country if such use is specified in a lease.