

EXPLANATORY STATEMENT

Australian Capital Territory National Land Amendment (Lakes) Ordinance 2018

Issued by the authority of the Assistant Minister for Regional Development and Territories

Seat of Government (Administration) Act 1910

Authority

The *Seat of Government (Administration) Act 1910* (the Act) provides for the Provisional Government of the Territory for the Seat of Government of the Commonwealth.

Section 12(1) of the 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*.

Purpose and Operation

The *Lakes Ordinance 1976*, as modified by the *National Land Ordinance 1989* and the *Lakes (Amendment) Ordinance 1992* (the Old Ordinance) applies to activity in relation to National Land that may be conducted on Lake Burley Griffin, Lake Ginninderra or any other body of water declared to be a lake under the *Lakes Ordinance 1976* as so modified.

The *Australian Capital Territory National Land Amendment (Lakes) Ordinance 2018* (the Ordinance) repeals and replaces the Old Ordinance which is due to sunset on 1 April 2019. The *Legislation Act 2003* provides for an instrument to sunset 10 years after its registration with special rules applying to older instruments (such as the Old Ordinance) registered in bulk on 1 January 2015. Sunsetting is the automatic repeal of legislative instruments, with the objective to reduce red tape, deliver clearer laws and align existing legislation with current government policy and ensure legislative instruments remain relevant and fit for purpose.

The Ordinance repeals the Old Ordinance and transfers the modifications of the *Lakes Ordinance 1976* made by the Old Ordinance to the *National Land Ordinance 1989*.

Amongst these modifications, the Old Ordinance modified the *Lakes Ordinance 1976* to include a replacement section 51, which provides applicants with the ability to have certain decisions of the Minister reviewed by the Administrative Appeals Tribunal. Section 51(4) also includes the previous Ordinance's non-invalidity clause which ensures that validity of decisions are not affected by a failure to comply with the notification requirements of section 51.

This reflects the status of Lake Burley Griffin and its foreshores as a designated area of national significance, the character of these decisions as relating to essential safety, environmental and heritage considerations, and provide surety as these decisions affect other legislative frameworks.

Section 51(4) is consistent with section 27A (3) of the *Administration Appeals Tribunal Act 1975* (the AAT Act). Section 27A (3) of the AAT Act provides that the validity of a reviewable decision is not affected where the decision maker fails to provide the person

whose interests are affected with a notice of decision and the right of that person to have the decision reviewed. Such provisions are included in other Commonwealth laws for the same reason: for example, see *Child Support (Registration and Collection) Act 1988*.

The Ordinance also implements minor changes for greater clarity and consistency with current drafting standards. None of these changes affect the substance of the *Lakes Ordinance 1976* as currently in force and modified in its application to National Land.

Consultation

The Australian Capital Territory Government, National Capital Authority, and Australian Federal Police were consulted and agree that the Ordinance should be made.

Details of the Ordinance are set out in the Attachment.

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

The Ordinance commences the day after it is registered.

Statement of Compatibility with Human Rights

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

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This Disallowable 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*.

Overview of the Legislative Instrument

This Disallowable Legislative Instrument replaces the *Lakes (Amendment) Ordinance 1992* which is due to sunset on 1 April 2019. It provides amendments from the *Lakes (Amendment) Ordinance 1992* to be substituted into the *Lakes Ordinance 1976* as it applies to the *National Land Ordinance 1989*. The amendments largely relate to activity that may be conducted on Lake Burley Griffin, Lake Ginninderra or any other body of water declared to be a lake under the *Lakes Ordinance 1976*.

Human rights implications

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

Conclusion

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

Australian Capital Territory National Land Amendment (Lakes) Ordinance 2018

Section 1 – Name

This section provides that the title of the Ordinance is the *Australian Capital Territory National Land Amendment (Lakes) Ordinance 2018*.

Section 2 – Commencement

This section provides for the Ordinance to commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

This section activates Schedule 1 to the Ordinance.

Schedule 1 – Amendments

Item 1 – Modifications of the *Lakes Ordinance 1976*

This item repeals the modifications of the *Lakes Ordinance 1976* currently provided for by Schedule 1 to the *National Land Ordinance 1989*, and substitutes the following modifications, based on the modifications in the Old Ordinance (which is to be repealed by Schedule 2 to the proposed Ordinance) and the current modifications in the *National Land Ordinance 1989*.

Paragraph 21(8)(b)

This paragraph provides that certain prohibitions in the *Lakes Ordinance 1976* relating to the use of a lake area or parts of a lake would not apply to: an Australian public servant or a Territory public servant; or 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. This retains a modification currently provided for by Schedule 1 to the *National Land Ordinance 1989*.

At the end of section 22

The section provides that the Minister may specify conditions in an authority relating to the conducting of a function in a closed area of a lake; and that this authority would apply to the members of the association to whom it is given and to all other persons whom it is expressed to apply. This modification is transferred from the Old Ordinance.

Paragraph 23(1)(a), (b) and (c)

These paragraphs provide that where an association of persons is authorised to conduct a function in a closed area, a person other than: a member of the association; or a person to whom the authority to conduct the function is expressed to apply, shall not enter or be in the closed area. This modification is transferred from the Old Ordinance.

Paragraph 23(2)(b)

This paragraph provides that restrictions relating to entering a closed area authorised to conduct a function do not apply to: an Australian public servant or a Territory public servant; or 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. This retains a modification currently provided for by the *Lakes Ordinance 1976*.

Paragraph 27(3)(b)

This paragraph provides that restrictions on the use of power boats do not apply to: an Australian public servant of a Territory public servant; or 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. This retains a modification currently provided for by the *Lakes Ordinance 1976*.

The modification of section 34 of the *Lakes Ordinance 1976* currently provided for by Schedule 1 to the *National Land Ordinance 1989* relates to agreements currently in force on 11 May 1989 (Self Government day). This omitted this modification because it is now redundant.

Section 36

This modification is made for consistency with current drafting standards.

At the end of section 36

This section provides that restrictions related to using the part of Lake Burley Griffin between Commonwealth Avenue Bridge and King's Avenue Bridge do not apply to a person who has authority from the Minister to conduct a function within that area. This modification is transferred from the Old Ordinance.

Subsection 38(5)

This subsection contained a drafting error and is now modified to correct the error. This modification is transferred from the Old Ordinance and is changed for consistency with current drafting standards.

Subsection 38(6)

This subsection contained a drafting error and is now modified to correct the error. This modification is transferred from the Old Ordinance and is changed for consistency with current drafting standards.

Section 39

This modification replaces section 39 with new sections 39 and 39A to correct an error in the way the *Lakes Ordinance 1976* (in its application to National Land) previously provided for lights to be carried by small power boats and sailing vessels. This modification is transferred from the Old Ordinance and is changed for consistency with current drafting standards.

Section 51

This modification replaces section 51 with a new section 51 to provide for the review by the Administrative Appeals Tribunal of a range of additional decisions. This modification is consolidated and transferred from the Old Ordinance. The modification is changed for consistency with current drafting standards.

In particular, the Old Ordinance modified the *Lakes Ordinance 1976* to include a new section 51(4). That new section 51(4) is retained by the Ordinance in its pre-existing form for consistency with section 27(A) (3) of the *Administration Appeals Tribunal Act 1975* (the AAT Act) and to provide clarity to users of the Ordinance. Section 27A (3) of the AAT Act provides the validity of a reviewable decision is not affected where the decision maker fails to provide the person whose interests are affected with a notice of decision and the right of that person to have the decision reviewed.

Section 51(4) also reflects the status of Lake Burley Griffin and its Foreshores as a designated area of national significance, under the National Capital Plan administered by the National Capital Authority. Decisions made under this Ordinance directly relate to the use and character of this area, such as approvals, authorities, or permits for use, and the imposition of conditions on use.

In addition, a no-invalidity clause is appropriate as the character of these decisions also reflect essential safety, environmental and heritage considerations, and feed into other legislative frameworks, such as the *Environment Protection and Biodiversity Conservation Act 1999* in relation to the natural and heritage management obligations for Commonwealth agencies that own or manage Commonwealth Heritage Listed places.

Section 51(4) also provides a general regulatory benefit in respect of decisions under the Ordinance by giving certainty about their legal effect.

These decisions regulate the conduct of persons in order to achieve the important public purpose of ensuring the proper management and conservation of Lake Burley Griffin. Section 51(4) ensures that persons, whose conduct is regulated, have certainty about the conduct they are legally allowed or forbidden to engage in. There would be considerable public inconvenience and regulatory uncertainty if such decisions could be rendered invalid only because, for instance, an administrative oversight resulted in a notice of decision not specifying that an application for review could be made to the Administrative Appeals Tribunal.

Were such an oversight to occur, a person who as a result did not apply to the Administrative Appeals tribunal for review of a decision within 28 days would remain able

to seek an extension of time in which to make an application for review under section 29 of the *Administrative Appeals Tribunal Act 1975*.

Schedule 2 – Repeals

Item 1 – The whole of the instrument

This item repeals the Old Ordinance.