

Explanatory Statement

Issued by the Authority of the Minister for Regional Development, Local Government and Territories

Seat of Government (Administration) Act 1910

Australian Capital Territory National Land (Road Transport) Ordinance 2025

Authority

The *Australian Capital Territory National Land (Road Transport) Ordinance 2025* (Ordinance) is made under paragraph 12(1)(d) the *Seat of Government (Administration) Act 1910* (SOG Administration Act). Paragraph 12(1)(d) of that Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Australian Capital Territory (ACT) with respect to National Land as defined by the *Australian Capital Territory (Planning and Land Management) Act 1988* (PALM Act).

Purpose

The purpose of the Ordinance is to remake the *National Land (Road Transport) Ordinance 2014* (2014 Ordinance) with minor and technical amendments to ensure that the Ordinance operates efficiently and effectively and is consistent with current drafting practices, and to incorporate certain provisions of the *National Land (Road Transport) (Parking) Rules 2024*. The 2014 Ordinance is due to sunset on 1 April 2026 in accordance with the *Legislation (Deferral of Sunsetting—National Land (Road Transport) Ordinance) Certificate 2024*.

Background

The Ordinance enables a legislative framework for the management of pay parking on National Land to be provided for by enabling the application, with or without modification, of laws of the ACT relating to road transport and parking to the National Land.

National Land is defined by section 27 of the PALM Act. National Land is land within the ACT that the Commonwealth continues to manage following the establishment of ACT self-government. The National Capital Authority (NCA) is established by that Act and one of its functions is, with the approval of the Minister administering that Act, on behalf of the Commonwealth, to manage National Land designated as land required for the special purposes of Canberra as the National Capital (see section 5 and paragraph 6(1)(g) of that Act) (also referred to as the National Capital Estate).

Pay parking was introduced to the National Capital Estate in 2014 and applies to around 9,000 car parks on National Land in Parkes, Barton, Acton, and the Russell precinct. Prior to its introduction, an Intergovernmental Committee on Parking was established in 2009 and public consultation commenced in 2010. The Intergovernmental Committee on Parking explored the issues surrounding parking management in central Canberra, including parking supply and demand. The work of the Intergovernmental Committee revealed that, while planning policies used to guide development of the National Capital Estate provided enough car parking spaces to meet commuter demand, restrictions on access to the available parking resulted in an undersupply of publicly available car parks. Consequently, pay parking was introduced as a parking management practice.

The issues impacting access to available parking spaces revealed by the Intergovernmental Committee on Parking still exist today and therefore pay parking on National Land is maintained as a parking management practice.

Under the SOG Administration Act, an Ordinance under that Act has no effect to the extent that it is inconsistent with the National Capital Plan in effect under the PALM Act. The Ordinance is not inconsistent with the National Capital Plan.

Summary of the Ordinance

The Ordinance remakes the 2014 Ordinance and incorporates certain provisions of the *National Land (Road Transport) (Parking) Rules 2024*.

The Ordinance is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to sunseting under Part 4 of Chapter 3 of that Act. The Ordinance is also subject to disallowance under Part V of the SOG Administration Act.

The Ordinance commences on 1 April 2025.

Details of the Ordinance are set out in Attachment A.

Consultation

The Minister is satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the *Legislation Act 2003*.

The NCA published a notice on its website on 5 December 2024, providing a draft copy of the Ordinance and explanatory statement and setting out details of the proposed Ordinance. Over the five-week consultation period, the public was invited to make submissions on the draft Ordinance to the NCA by close of business 10 January 2025.

The NCA did not receive any submissions in response to the consultation notice.

Impact analysis

The Office of Impact Analysis (OIA) advised that detailed analysis is not required (OIA reference number OIA24-08526).

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Details of the *Australian Capital Territory National Land (Road Transport) Ordinance 2025*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the Ordinance is the *Australian Capital Territory National Land (Road Transport) Ordinance 2025*.

Section 2 – Commencement

This section provides that the Ordinance commences on 1 April 2025.

Section 3 – Authority

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

Section 4 – Simplified outline of this Ordinance

This section provides for a simplified outline of the Ordinance and is an aid for reading the Ordinance. However, this outline does not form part of the operative text of the Ordinance and is not intended to be comprehensive. Instead, it is intended that readers rely on the substantive provisions of the Ordinance.

Section 5 – Definitions

This section provides for the definitions of terms used in the Ordinance, including ‘ACT’, ‘authority’ and ‘rules’.

The following definitions are explained further.

The term ‘ACT road transport law’ is defined as meaning:

- a law of the Australian Capital Territory (ACT) relating to road transport or parking
- a provision of such a law;
- an instrument, or a provision of an instrument, that is:
 - in force under, or incorporated into, such a law; or
 - incorporated into an instrument that is in force under, or incorporated into, such a law; or
- a law of the ACT so far as it gives meaning to, or limits or extends the meaning of, of a term used in such a law, provision or instrument;

and includes a law, provision or instrument as in force at a specified time before the rules commence (if a rule applies such a law, provision or instrument as at that time for the purposes of paragraph 8(2)(b) of the Ordinance).

Such a law would include, for example, a law of the ACT relating to the interpretation of an

ACT road transport law, such as the *Legislation Act 2001* (ACT) (see, for example, Chapters 13 to 18 of that Act).

The terms ‘road transport’ and ‘parking’ are not defined, which means that the ordinary meaning of these terms apply. Practically, ACT road transport laws are intended to include laws of the ACT, or provisions of such laws, relating to pay parking, such as relevant provisions of the *Road Transport (General) Act 1999* (ACT), the *Road Transport (Safety and Traffic Management) Act 1999* (ACT) and instruments made under those Acts that do the following things:

- regulating or prohibiting the parking of vehicles on specified areas of National Land, including pay parking;
- regulating or prohibiting traffic on roads and road related areas on National Land, including installing or displaying traffic control devices;
- enforcing those things, including serving and enforcing infringement notices in relation to certain offences of those Acts and instruments.

The term ‘applied ACT road transport law’ is defined as meaning an ACT road transport law as applied, with or without modifications, to National Land by rules made for the purposes of subsection 8(1) of the Ordinance. Section 14 provides for this rule-making power.

The term ‘National Land’ is defined as having the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* (PALM Act). Section 4 of that Act defines the term ‘National Land’ as having the meaning given by section 27, which provides that the Minister administering this section may declare specified areas of land in the ACT to be National Land, provided it is, or is intended to be, used by or on behalf of the Commonwealth (see subsections (1) and (2)).

In practical terms, National Land is land within the ACT that the Commonwealth continues to manage following the establishment of ACT self-government. The National Capital Authority (NCA) is responsible for, on behalf of the Commonwealth, the management of National Land designated as land required for the special purposes of Canberra as the National Capital under the PALM Act (see paragraph 6(1)(g)).

The term ‘power’ is defined as including a function or a duty. In contexts where power includes a function or duty, ‘exercise’ also means perform (e.g. exercise a power or perform a function).

Section 6 – Interpretation of applied ACT road transport laws

This section clarifies the way in which an applied ACT road transport law (whether applied with or without modifications) is to be interpreted, which is to be in the same way as it would be interpreted as a law of the ACT. For example, an applied ACT road transport law is to be interpreted in accordance with Chapters 13 to 18 of the *Legislation Act 2001* (ACT), which set out the general principles for the interpretation of Acts, and instruments made under Acts, of the ACT (see the definition of ‘statutory instrument’ in section 13 and the definition of ‘Act’ in section 136 of that Act).

Section 7 – Application of the ACT Criminal Code

This section incorporates by reference Chapter 2 of the *Criminal Code 2002* (ACT) (ACT Criminal Code) into the Ordinance. This Chapter sets out the general principles of criminal responsibility under laws of the ACT. This section provides that this Chapter applies to all offences against an applied ACT road transport law.

Incorporating by reference Chapter 2 of the ACT Criminal Code into the Ordinance is necessary to aid with interpreting and applying offences against an applied ACT road transport law (whether applied with or without modifications), including the physical and fault elements of such offences. This ensures that all parking offences in the ACT, whether under an applied ACT road transport law or the ACT equivalent, will be subject to the same principles of criminal responsibility.

Subsection (2) provides the rules may specify the point in time in which Chapter 2 of the ACT Criminal Code is incorporated, that is, as at either the time the rules commence or an earlier point in time. Current and point-in-time versions of the ACT Criminal Code are freely accessible on the ACT Legislation Register at www.legislation.act.gov.au.

Part 2 – Application of ACT road transport laws to National Land

Section 8 – Applied ACT road transport laws

This section enables the rules to ‘pick up’ or apply specified ACT road transport laws, with or without modification, to the whole of National Land or a specified area of National Land. Enabling the rules to apply ACT road transport laws to specified areas of National Land provides the Commonwealth with the flexibility to apply such laws as are necessary and appropriate for providing a legislative framework for the management of pay parking in these areas. This includes relevant provisions of the *Road Transport (General) Act 1999* (ACT), the *Road Transport (Safety and Traffic Management) Act 1999* (ACT) and instruments made under those Acts that do the following things:

- regulating or prohibiting the parking of vehicles on specified areas of National Land, including pay parking;
- regulating or prohibiting traffic on roads and road related areas on National Land, including installing or displaying traffic control devices;
- enforcing those things, including serving and enforcing infringement notices in relation to certain offences of those Acts and instruments.

Subsection (1) provides that the rules may apply specified ACT road transport laws, with or without modification, to National Land or to specified areas of National Land. This may include the application, with or without modification, of offences and provisions subject to a pecuniary penalty created by ACT road transport laws.

Subsection (2) clarifies that a rule made for the purposes of subsection (1) may apply ACT road transport laws as in force at either the time when the rule commences or a specified time before the rule commences. This may include a version of an ACT law that was in force at an earlier point in time, but is not in force as an ACT law now, for example because it has been amended or repealed by the ACT Legislative Assembly.

As the rules made for the purposes of subsection (1) can only apply ACT road transport law as in force at a particular time, rather than as in force from time to time, the flexibility afforded by the rules applying the ACT road transport law, rather than the Ordinance, is important to allow the applied ACT road transport law to be updated as needed through the rule-making process. This flexibility will help to ensure that the law relating to road transport or parking in the ACT is, as far as practicable, the same on both National Land and Territory Land.

Section 9 – Declarations in relation to roads and road related areas

This section replicates section 12 of the *Road Transport (General) Act 1999* (ACT) to enable the Minister to alter the scope of where, within areas of National Land, applied ACT road transport laws apply.

Subsection (1) provides the Minister may, by legislative instrument, declare that an applied ACT road transport law or a provision of such a law:

- under paragraph (1)(a), applies to an area of National Land that is not a ‘road’ or ‘road related area’, but is otherwise open to or used by the public; or
- under paragraph (1)(b), does not apply to a ‘road’ or ‘road related area’.

The note to subsection (1) refers to the Minister’s power of delegation under section 12C of the SOG Administration Act. Subsection 12C(1) of that Act provides for the Minister to “delegate to any person all or any of his or her powers or functions under any Ordinance made under this Act”. As this Ordinance is made under that Act, section 12C allows the Minister to delegate their power to make a declaration under subsection (1) of this section.

Although section 12C of the SOG Administration Act allows the Minister to delegate their powers and functions to any person, in practice, it is intended that the power to make a declaration under subsection (1) of this section will only be delegated to the Chief Executive of the NCA. Delegating the Minister’s power under this section ensures declarations can be made efficiently, and only as required, to respond to any changes or needs in an operational environment where the Minister may not have the capacity to make every declaration personally under subsection (1). The Chief Executive of the NCA is appropriately senior and qualified to exercise this power as the Minister’s delegate.

Delegations under section 12C of the SOG Administration Act are required to be made in writing and will, in practice, be made in the same delegation instrument as the Minister’s other delegations under subsection 11(3) of the Ordinance. This instrument will be provided to all of the Minister’s delegates, so there is certainty about who is exercising which powers under the Ordinance and the applied ACT road transport legislation.

Subsection (2) clarifies that a declaration made under subsection (1) has effect until it is revoked or, if a period is stated in the declaration, for that period.

A declaration made under subsection (1) is a legislative instrument for the purposes of the *Legislation Act 2003* and therefore subject to parliamentary scrutiny, including disallowance, and sunseting under that Act.

Subsection (3) defines the terms ‘road’ and ‘road related area’ for the purposes of this

section. These definitions of ‘road’ and ‘road related area’ replicate the definitions of these terms in the Dictionary to the *Road Transport (General) Act 1999* (ACT), but modify these definitions to ensure these terms are appropriately adapted to the management of pay parking on specified areas of National Land under applied ACT road transport laws. For example, a ‘road’ is defined, in relation to an applied ACT road transport law or a provision of such a law, as meaning an area of National Land that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles, but does not include areas of National Land to which a declaration under subsection (1) declares that such laws or provisions of such laws do not apply.

The terms ‘road’ and ‘road related area’ are key concepts used in ACT road transport laws that derive from the Australian Road Rules. The Australian Road Rules are intended to provide uniform rules across Australia for all road users and specify behaviour for all road users that supports the safe and efficient use of roads in Australia. The Australian Road Rules apply to vehicles and road users, including drivers and riders of vehicles and pedestrians, on roads and in road related areas, such as footpaths, nature strips and parking areas. Provisions of ACT road transport laws generally apply to road related areas in the same way that these provisions apply to roads, unless otherwise specified. Similarly, a reference to a ‘road’ in a provision of an ACT road transport law generally includes a reference to a ‘road related area’, unless otherwise specified. For example, a particular provision of an ACT road transport law may provide that it does not apply to road related areas or it only applies to road related areas.

Section 10 – Concurrent operation of Commonwealth and ACT laws

This section clarifies that an applied ACT road transport law applies to National Land as a Commonwealth law, but that law is not intended to ‘cover the field’ in relation to (or be an exhaustive treatment of) the subject matter with which that law deals.

Subsection (1) provides that, if the rules apply a specified ACT road transport law to National Land (whether the whole of National Land or a specified area of National Land), the applied ACT road transport law applies to the National Land as a law of the Commonwealth.

Subsection (2) provides that the Ordinance and any rules made under the Ordinance are not intended to exclude or limit the operation of a law of the ACT to the extent that that law is capable of operating concurrently with the Ordinance or rules.

National Land is geographically located within the ACT, which means that ACT road transport laws apply by default as laws of the ACT to National Land.

The operation of this section means that the ACT equivalent of an applied ACT road transport law would not apply to areas of National Land to the extent of any inconsistency between the applied ACT road transport law and the ACT equivalent (e.g. if the concurrent operation of the ACT equivalent was determined to be ‘repugnant’ to or inconsistent with the applied ACT road transport law). However, the ACT equivalent would continue to apply to National Land to the extent that that law is capable of operating concurrently with the Ordinance or the rules. Additionally, the Ordinance and the rules do not displace the application of ACT road transport laws that are not intended to be applied by the rules to National Land, such as offences relating to alcohol and drug-impaired driving on roads in

the ACT under the *Road Transport (Alcohol and Drugs) Act 1977* (ACT). Such laws would continue to apply as laws of the ACT to National Land and be enforceable by the ACT.

Section 11 – Powers under applied ACT road transport laws

This section designates responsibility for the administration of applied ACT road transport laws between authorised persons appointed under section 13 of the Ordinance and the Minister administering the SOG Administration Act, vesting powers under applied ACT road transport laws in authorised persons and the Minister. This section also authorises the Minister to delegate powers under applied ACT road transport laws with which the Minister is vested under this section to other persons.

Subsection (1) provides that, if by an applied ACT road transport law, a power is vested in a person referred to in that law as an authorised person, that power is instead vested in a person appointed under section 13 of the Ordinance as an authorised person or a person prescribed by the rules. For paragraph (1)(a), the Minister may appoint a person as an authorised person under section 13.

Authorised persons are generally authorised to exercise powers under the relevant ACT road transport law relating to enforcing compliance with that law, which relevantly include, for example, serving infringement notices on persons for infringement notice offences. An authorised person must be issued with an identity card that states the person is an authorised person for the purposes of ACT road transport laws and is only able to exercise a power under an ACT road transport law in relation to a person if the authorised person first shows the identity card to the person (see sections 20 and 21 of the *Road Transport (General) Act 1999* (ACT)). The appointment of an authorised person is explained in the notes on section 13 of the Ordinance.

Subsection (2) provides that, if by an applied ACT road transport law, a power is vested in a Minister of the ACT or a person or authority referred to in that law as the road transport authority, that power is instead vested in the Minister administering the SOG Administration Act (referred to as the ‘Commonwealth Minister’). This may include, for example, the ACT authority responsible for the administration of ACT road transport laws in the ACT.

The Minister or Ministers of the ACT administering the relevant ACT road transport law exercise powers under that law for administering that law, which relevantly include, for example, altering the scope of the operation of ACT road transport laws and issuing guidelines for the exercise of powers under those laws. The road transport authority supports the Minister or Ministers in administering the relevant ACT road transport law, relevantly exercising such powers as issuing identity cards to authorised persons, allowing payments by instalment, allowing or refusing applications for certain things relating to infringement notices, withdrawing infringement notices and issuing parking permits.

The change from the 2014 Ordinance, which specified the Chief Executive of the NCA as the authority responsible for administering the applied ACT road transport law on National Land (and therefore the authority to exercise the relevant powers under that law), is to align this new Ordinance with other Ordinances that apply on National Land, such as the *Australian Capital Territory National Land (Lakes) Ordinance 2022*. These other Ordinances vest power in the Minister and then allow for delegation or appointment of authorised persons (such as inspectors) to facilitate the day-to-day functioning of those

Ordinances.

Subsection (3) of this Ordinance provides that, if a power is vested in the Commonwealth Minister under subsection (2), the Commonwealth Minister may delegate the power to a person or a person holding, occupying, or performing the duties of, a specified office or position.

Subsection (4) provides that the Commonwealth Minister must not delegate a power under subsection (3) unless the Commonwealth Minister is satisfied that:

- if the power is to be delegated to a specified person, the person has appropriate qualifications or expertise to exercise the power; or
- if the power is to be delegated to a person holding, occupying, or performing the duties of, a specified office or position, the office or position is sufficiently senior for the person to exercise the power.

The purpose of this express power to delegate is to enable the Minister administering the SOG Administration Act to delegate any or all powers under applied ACT road transport laws with which the Minister is vested to certain persons.

Subsection (4) limits the delegation of such powers to a person who the Minister is satisfied has appropriate qualifications or expertise, or holds or occupies a sufficiently senior office or position. These persons are intended to include:

- the Chief Executive of the NCA and other SES employees or acting SES employees of the NCA;
- staff of the NCA who occupy, or are acting in, an Executive Level position and who have a responsibility for, or appropriate expertise in relation to, parking management on National Land; and
- staff of a third-party service provider with which the Minister or their delegate has entered into an administrative arrangement under section 12 of the Ordinance who either have appropriate qualifications or expertise or are appointed as an authorised person under section 13.

This is intended to ensure that powers under applied ACT road transport laws are exercised efficiently and effectively in an operational environment where the Minister, or the Chief Executive or other SES employees of the NCA, may not have the capacity to exercise all powers with which the Minister is vested under those laws. In this context, many of the powers that are delegated to staff of the NCA or a third-party service provider may be required to be exercised by a person who occupies or acts in a lower classification (e.g. Executive Level), or otherwise has appropriate qualifications or expertise, as a matter of administrative necessity because of the high volume and short timeframes for the exercise of these powers. This may include, for example, issuing an ‘on-the-spot’ infringement notice to a person at a parking area on National Land or assessing an application to pay an infringement notice by instalments and deciding the amount of the instalments that must be paid.

The Minister has a broad discretion to determine whether a person who is proposed to be a

delegate has appropriate qualifications or expertise. For paragraph (4)(a), it is intended that such persons who are not NCA staff (for example, staff from a third-party service provider) will be required to undertake relevant training to ensure those persons are suitable to exercise powers under applied ACT road transport laws.

A delegation made under subsection (3) may be subject to such conditions as are specified in the delegation (see subsection (5)). The ability to impose conditions to which the exercise of a delegated power is subject is appropriate to enable the Minister to retain a degree of oversight and control of the exercise of that power. But this ability does not otherwise enable the Minister to direct a delegate in the exercise of the delegate's discretion, which is a principle of administrative law.

Section 12 – Administrative arrangements with ACT or another person

This section enables the Minister administering the SOG Administration Act to enter into arrangements with the ACT or other persons, such as other bodies politic, bodies corporate or individuals, to administer applied ACT road transport laws.

Subsection (1) provides that the Minister may enter into arrangements with the ACT or another person in relation to the effective application and administration of applied ACT road transport laws.

The ACT is established as a body politic under section 7 of the *Australian Capital Territory (Self-Government) Act 1988*, and subsection 2C(1) of the *Acts Interpretation Act 1901* (Acts Interpretation Act) provides that the reference to 'person' includes a body politic or corporate and an individual.

The note to subsection (1) refers to the Minister's power of delegation under section 12C of the SOG Administration Act. Subsection 12C(1) of that Act provides for the Minister to "delegate to any person all or any of his or her powers or functions under any Ordinance made under this Act". As this Ordinance is made under that Act, section 12C allows the Minister to delegate their power to enter into arrangements under subsection (1) of this section.

Although section 12C of the SOG Administration Act allows the Minister to delegate their powers and functions to any person, in practice, it is intended that the power to enter into arrangements with the ACT or another person under subsection (1) of this section will only be delegated to the Chief Executive of the NCA. Delegating the Minister's power under this section ensures arrangements can be entered to efficiently, and only as required, to respond to any changes or needs in an operational environment where the Minister may not have the capacity to enter into every arrangement personally under subsection (1). The Chief Executive of the NCA is appropriately senior and qualified to exercise this power as the Minister's delegate.

Delegations under section 12C of the SOG Administration Act are required to be made in writing and will, in practice, be made in the same delegation instrument as the Minister's other delegations under subsection 11(3) of the Ordinance. This instrument will be provided to all of the Minister's delegates, so there is certainty about who is exercising which powers under the Ordinance and the applied ACT road transport legislation.

Subsection (2) clarifies that, without limiting subsection (1), an arrangement entered into

under this section may provide for the exercise of powers by the ACT or the other person on behalf of the Minister. For example, such an arrangement may provide for the ACT (or its authorities, officers or employees) to administer certain provisions of an applied ACT road transport law that would otherwise be the exclusive responsibility of the Minister. Such an arrangement may also be used to define the responsibilities of different bodies or persons, such as between the NCA and the ACT or another person, in respect of the administration of applied ACT road transport laws.

Section 13 – Authorised persons

This section enables the appointment of authorised persons to exercise powers provided for under applied ACT road transport laws.

Subsection (1) provides that the Minister administering the SOG Administration Act may appoint a person or a person holding, occupying, or performing the duties of, a specified office or position to be an authorised person for the purposes of paragraph 11(1)(a) of the Ordinance. Under paragraph 11(1)(a), a person appointed under this section as an authorised person is vested with the same powers vested in a person referred to in an applied ACT road transport law as an authorised person and therefore may exercise those powers.

The note to subsection (1) refers to the Minister’s power of delegation under section 12C of the SOG Administration Act. Subsection 12C(1) of that Act provides for the Minister to “delegate to any person all or any of his or her powers or functions under any Ordinance made under this Act”. As this Ordinance is made under that Act, section 12C allows the Minister to delegate their power to appoint an authorised person under subsection (1) of this section.

Although section 12C of the SOG Administration Act allows the Minister to delegate their powers and functions to any person, in practice, it is intended that the power to appoint an authorised person under subsection (1) of this section will only be delegated to the Chief Executive of the NCA. Delegating the Minister’s power under this section ensures the appointments of authorised persons are made efficiently and effectively in an operational environment where the Minister may not have the capacity to personally appoint every authorised person under subsection (1). The Chief Executive of the NCA is appropriately senior and qualified to exercise this power as the Minister’s delegate.

Delegations under section 12C of the SOG Administration Act are required to be made in writing and will, in practice, be made in the same delegation instrument as the Minister’s other delegations under subsection 11(3) of the Ordinance. This instrument will be provided to all of the Minister’s delegates, so there is certainty about who is exercising which powers under the Ordinance and the applied ACT road transport legislation.

Subsection (2) sets out the requirements for a person to be eligible to be appointed as an authorised person under this section to ensure that such a person is suitable to exercise the powers of authorised persons provided for under applied ACT road transport laws. This subsection prohibits a person from being appointed under subsection (1) as an authorised person unless the following requirements are met:

- the person is an Australian citizen or a permanent resident of Australia; and

- the Minister is satisfied that the person is a suitable person to be appointed, having regard in particular to the person's history of criminal convictions, employment record and satisfactory completion of adequate training to exercise the powers of an authorised person.

Section 2B of the Acts Interpretation Act defines 'Australian citizen' as having the same meaning as in the *Australian Citizenship Act 2007* (see section 4 of that Act). The term 'permanent resident' is not defined in the Acts Interpretation Act, but is defined in section 5 of the *Australian Citizenship Act 2007*.

The term 'suitable' is not defined in the Ordinance, which means its ordinary meaning applies.

The Minister has a relatively broad discretion to determine whether a person who is proposed to be an authorised officer is suitable to be appointed as an authorised person, subject to considering suitability requirements set out in this subsection. For subparagraph 10(2)(b)(iii), it is intended that such persons will be required to complete specified training provided to those persons to ensure such persons are suitable to exercise powers under applied ACT road transport laws.

These suitability requirements replicate similar requirements for the appointment of authorised persons under subsection 19(3) of the *Road Transport (General) Act 1999* (ACT) that go to the relevant person's fitness and proper standing to be authorised to exercise certain powers under applied ACT road transport laws.

It is necessary and appropriate that the Minister has a broad discretion to determine the suitability of a person who is proposed to be appointed as an authorised person. Authorised persons are authorised to exercise these powers to enforce compliance with, and therefore perform a fundamental role in upholding the integrity of, the legislative framework for the management of pay parking on specified areas of National Land. There is also no provision for any person to apply to be an authorised officer or an expectation that a particular person must be an authorised person.

Provided that the Minister determines that a person is suitable to be appointed as an authorised person, the person may be an officer or employee of a Commonwealth entity, an ACT authority or a third-party service provider.

Subsection (3) limits the appointment of authorised persons under paragraph (1)(b) to persons who the Minister is satisfied hold, occupy, or perform the duties of, a specified office or position that is sufficiently senior for the person to exercise the powers of an authorised powers. These persons are intended to include:

- staff of the NCA who occupy, or are acting in, an Executive Level 1 position or a higher classification, including the Chief Executive of the NCA and other SES employees or acting SES employees of the NCA, and
- staff of a third-party service provider with which the Minister or their delegate has entered into an administrative arrangement under section 12 of the Ordinance who either have appropriate qualifications or expertise or otherwise meet the suitability requirements to be appointed as an authorised person under this section.

Subsection (4) provides that, to avoid doubt, nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (Crimes Act), the purpose of which is to preserve the operation of the Commonwealth Spent Conviction Scheme. The explanatory note at the end of this subsection notes that this Part includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent criminal convictions and requires persons aware of such convictions to disregard them.

Part 3 – Miscellaneous

Section 14 – Rule-making power

This section empowers the Minister administering the SOG Administration Act to make rules in respect of a range of matters under the Ordinance.

Subsection (1) provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Ordinance to be prescribed by rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Ordinance.

This rule-making power provides the Minister administering the SOG Administration Act with the flexibility to prescribe matters that are not provided for in the Ordinance, however it is expected that the rules would predominantly be made for the purposes for subsection 8(1) (that is, rules that apply specified ACT road transport laws, with or without modification, to National Land). Other matters may arise for a range of unforeseen developments that require immediate or prompt changes to the legislative framework, such as to ensure that it aligns with any significant changes to laws of the ACT relating to road transport or parking. As the rules made for the purposes of subsection 8(1) can only apply ACT road transport law as in force at a particular time (when the rules commence or a specified earlier time), having the flexibility afforded by the rules applying the ACT road transport law, rather than the Ordinance, is important to ensure the law relating to road transport or parking in the ACT is, as far as practicable, the same on both National Land and Territory Land.

As the rules are legislative instruments, the *Legislation Act 2003* will apply to the rules and therefore the rules will be subject to parliamentary scrutiny, including disallowance, and sunseting (see Parts 2 and 4 of Chapter 3 of that Act).

Subsection (2) sets out the limitations on the matters that the rules may prescribe, which are significant in nature. This subsection provides that, to avoid doubt, the rules may not do any of the following:

- create an offence or civil penalty or impose a pecuniary penalty;
- provide powers of arrest or detention, or entry, search or seizure;
- impose a tax; or
- directly amend the text of the Ordinance.

Subsection (3) would clarify that the limitation in paragraph (2)(a) relating to not creating an offence or civil penalty or imposing a pecuniary penalty in the rules does not preclude a rule being made, for the purposes of subsection 8(1), that applies or modifies an ACT road transport law, including an existing offence, civil penalty or pecuniary penalty created by that law. While allowing the application of existing offences in the ACT road transport law,

which have been through the relevant scrutiny and rigour of ACT Legislative Assembly process, this subsection would not allow the rules to create entirely new offences, civil penalties or pecuniary penalties. This subsection would, however, allow the rules to modify these offences to ensure that the offences are appropriately adapted to the management of pay parking on specified areas of National Land under the applied ACT road transport laws. These modifications in the rules are subject to the appropriate Commonwealth parliamentary scrutiny under the *Legislation Act 2003*.

Subsection (4) provides that, in applying or modifying any offences in an ACT road transport law, the rules may specify an amount of a penalty unit in such a law that is different to the amount specified in section 4AA of the Crimes Act. This enables the rules to instead apply the amount of a penalty unit specified in section 133 of the *Legislation Act 2001* (ACT), which is \$160 for an individual and substantially lower in value compared to the amount of a penalty unit under subsection 4AA of the Crimes Act. Enabling the rules to do so will ensure consistency for penalties for offences under an applied ACT road transport law and the ACT equivalent of that law, meaning that road users will be subject to the same penalty amounts regardless of whether they park on National Land or Territory Land.

Subsection (5) clarifies that an amount of a penalty unit specified in a rule under subsection (4) applies in relation to an offence committed on or after the commencement of the rules.

Part 4 – Transitional, application and saving provisions

Division 1 – Transitional, application and saving provisions in relation to the commencement of this instrument

This Division provides transitional, application and saving provisions in relation to the commencement of the Ordinance, to ensure that the transition from the 2014 Ordinance to this Ordinance does not create any gaps in the pay parking scheme or generate doubts for the public or for the NCA that would cause them to do an unnecessary thing (such as purchasing additional parking tickets or remaking staffing appointments).

Section 15 – Definitions

This section provides for the definitions of terms used in Division 1 of Part 4.

The term ‘old Ordinance’ is defined as meaning the *National Land (Road Transport) Ordinance 2014*, as in force immediately before the commencement of this Ordinance.

The term ‘repeal Ordinance’ is defined as meaning the *Australian Capital Territory National Land (Road Transport) (Repeal and Consequential Amendments) Ordinance 2025*.

Section 16 – Application

This section provides for the continuity under this Ordinance of parking tickets purchased, and infringement notices issued, under the old Ordinance and in effect immediately before the commencement of this Ordinance.

Subsection (1) provides for the Ordinance to apply to parking tickets purchased, and infringement notices issued, on or after the commencement of the Ordinance. This subsection expresses the general rule that applies to new legislation (that it has prospective effect), but caveats that it is subject to the special rules provided for in subsections (2), (3)

and (4).

Subsection (2) provides that, despite the repeal of the old Ordinance, the old Ordinance and instruments made under it continue to apply to parking tickets purchased, and infringement notices issued, before that repeal, if they were not finally dealt with before the commencement of this Ordinance. This would mean, for example, an infringement notice issued before the commencement of this Ordinance that had not been paid in full, withdrawn or referred to court would still be subject to the requirements of the old Ordinance and instruments made under that Ordinance, as the infringement notice would have been issued under those requirements. However, this subsection notes that it is subject to the special rules provided in subsections (3) and (4) in relation to infringement notice management plans.

Subsection (3) provides for the continuity under the Ordinance of an infringement notice management plan entered into under the old Ordinance and in effect immediately before the commencement of this Ordinance. Such an infringement notice management plan would be maintained and could be dealt with as if it were a plan entered into under this Ordinance, for example in relation to adding new infringement notice penalties to an existing infringement notice management plan.

Subsection (4) provides that, where an infringement notice management plan is entered into under the Ordinance in relation to an infringement notice issued under the old Ordinance, the infringement notice management plan is to be dealt with in accordance with this Ordinance.

Section 17 – Staffing arrangements

This section provides that an arrangement under section 6 of the *National Land (Road Transport) (Parking) Rules 2024* (Parking Rules), that is in force immediately before the commencement of the Ordinance, has effect from the commencement of the Ordinance as if it were an arrangement entered into under section 12 of the Ordinance.

Section 6 of the Parking Rules allows the Chief Executive of the NCA to arrange with a person for the services of officers or employees of the person to be made available for the purposes of the old Ordinance. Section 12 of the Ordinance allows the Minister (or their delegate) to enter into arrangements with the ACT or another person for the effective application and administration of the applied ACT road transport laws. In practice, although the Minister can delegate their powers and functions under the Ordinance to any person, it is intended that the power to enter into arrangements with the ACT or another person under subsection 12(1) of the Ordinance will only be delegated to the Chief Executive of the NCA.

Arrangements entered into under either section 6 of the Parking Rules or section 12 of the Ordinance both have the practical effect of ensuring that the Chief Executive of the NCA can enter into arrangements with suitable persons to assist in the administration of the applied ACT road transport laws. This could, for example, include arrangements with persons for appropriately qualified or experienced employees of the person to serve reminder notices for parking infringement notices, grant an extension of time to do something in relation to an infringement notice or reminder notice or allow for infringement notices to be added to infringement notice management plans. These are administrative tasks under the applied ACT road transport law that, due to their volume, may not be practicable

to be solely done by other delegates of the Minister, such as employees of the NCA, and could more efficiently be done by other appropriately qualified or experienced persons.

The Chief Executive of the NCA has entered into an arrangement with a third-party parking service provider who has, or who employs staff with, the appropriate qualifications or skills to assist the Minister and the Chief Executive of the NCA with the effective application and administration of the applied ACT road transport laws. This section of the Ordinance ensures that this arrangement, currently effected under section 6 of the Parking Rules, will be considered to be an arrangement entered into under section 12 of the Ordinance and will therefore continue to be a valid arrangement under the Ordinance. This allows for the continued effective administration of the pay parking scheme on National Land during the transition from the 2014 Ordinance to this Ordinance, without a break in the services provided by the third-party parking service provider that would occur if a new arrangement had to be entered into once this Ordinance commences.

Section 18 – Ticket parking scheme

This section provides that, if a ticket parking scheme was established under the old Ordinance and it was still in effect immediately before the commencement of this Ordinance, the ticket parking scheme continues to have effect as if it were a ticket parking scheme established in accordance with this Ordinance, the rules and applied ACT road transport law. This includes, for example, ticket parking schemes established by parking authorities declared by the Minister or their delegate under section 33 of the *Road Transport (Safety and Traffic Management) Regulation 2017* (ACT)(Cth) (as previously applied by the old Ordinance and rules and continuing to be applied by this Ordinance and rules).

One such ticket parking scheme has been established by the High Court of Australia (High Court), as a parking authority as declared by the *Australian Capital Territory National Land (Road Transport) Parking Authority Declaration 2021*. The intention is that the High Court will be declared as a parking authority under a new declaration under the new Ordinance, rules and applied ACT road transport law. This section allows the High Court to continue to operate their ticket parking scheme, in accordance with the new ticket parking guidelines made under the new Ordinance, rules and applied ACT road transport law, but without the requirement of formally re-establishing the ticket parking scheme.

Statement of Compatibility with Human Rights

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

Australian Capital Territory National Land (Road Transport) Ordinance 2025

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 Disallowable Legislative Instrument

The *Australian Capital Territory National Land (Road Transport) Ordinance 2025* (Ordinance) is made under paragraph 12(1)(d) the *Seat of Government (Administration) Act 1910*. Paragraph 12(1)(d) of that Act provides that the Governor-General may make Ordinances for the peace, order and good government of the Australian Capital Territory (ACT) with respect to National Land as defined by the *Australian Capital Territory (Planning and Land Management) Act 1988* (PALM Act).

The purpose of the Ordinance is to remake the *National Land (Road Transport) Ordinance 2014* (2014 Ordinance) with minor and technical amendments to ensure that the Ordinance operates efficiently and effectively and is consistent with current drafting practices, and to incorporate certain provisions of the *National Land (Road Transport) (Parking) Rules 2024*. The 2014 Ordinance is due to sunset on 1 April 2026 in accordance with the *Legislation (Deferral of Sunsetting—National Land (Road Transport) Ordinance) Certificate 2024*.

The Ordinance enables a legislative framework for the management of pay parking on National Land to be provided for by enabling the application, with or without modification, of laws of the ACT relating to road transport and parking to the National Land.

National Land is defined by section 27 of the PALM Act. National Land is land within the ACT that the Commonwealth continues to manage following the establishment of ACT self-government. The National Capital Authority is established by that Act and one of its functions is, with the approval of the Minister administering that Act, on behalf of the Commonwealth, to manage National Land designated as land required for the special purposes of Canberra as the National Capital (see section 5 and paragraph 6(1)(g) of that Act).

Human rights implications

The Ordinance does not engage any of the applicable rights or freedoms.

Conclusion

The Ordinance is compatible with human rights as it does not raise any human rights issues.