

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

NATIONAL LAND ORDINANCE 1989

ORDINANCE NO. 39 OF 1989

Section 27 of the Australian Capital Territory (Planning and Land Management) Act 1988 provides that the Minister may declare specified areas of land in the Territory to be National Land (ie, land reserved to the Commonwealth), as distinguished from Territory Land (ie, the remainder of land in the Territory). When Self-Government came into effect, all laws in the Territory, except Commonwealth laws and the Ordinances specified in Schedule 3 of the Australian Capital Territory (Self-Government) Act 1988, were converted into enactments by virtue of section 34 of that Act. They are therefore capable of being amended or repealed by the ACT Legislative Assembly. As a result of this conversion, thirteen laws which related to land management in the Territory (the relevant pre-Self-Government laws) no longer exist in their pre-self-government form.

The National Land Ordinance 1989 (the Ordinance) fills the vacuum left by the conversion of these laws by making provision for the management of National Land. Under the Ordinance, the relevant Commonwealth Minister is generally responsible for the management of National Land. The Ordinance also adopts, modifies and applies the provisions (the applied provisions) of relevant pre-Self-Government laws as they existed immediately before Self-Government, notwithstanding that those laws have been converted into Territory enactments.

The purpose and details of the Ordinance appear in the Attachment.

ISSUED WITH THE AUTHORITY OF
THE MINISTER FOR THE ARTS AND
TERRITORIES

NATIONAL LAND ORDINANCE 1989

Section 1 cites the short title of the Ordinance as being the National Land Ordinance 1989.

Section 2 provides that the Ordinance commences on the day on which section 22 of the Australian Capital Territory (Self-Government) Act 1988 commences (referred to as Self-Government Day).

Section 3 is an interpretation provision.

Section 4 provides that the Minister is to manage National Land on behalf of the Commonwealth, subject to the provisions of the relevant pre-Self-Government laws as modified and applied by this Ordinance.

Subsection 5(1) has the effect that, subject to the modifications specified elsewhere in section 5 and in the Schedule, the provisions of the following pre-Self-Government laws will apply to National Land from Self-Government Day:

- (a) the City Area Leases Ordinance 1936;
- (b) the City Area Leases Regulations
- (c) the Crown Lands Act 1984 (New South Wales in its application in the Territory);
- (d) the Dedication by User Limitation Act 1902 (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 (New South Wales in its application in the Territory);
- (k) the Recovery of Lands Ordinance 1929;
- (l) the Roads and Public Places Ordinance 1937; and

(m) the Trespass on Commonwealth Lands Ordinance 1932.

Subsection 5(2) provides that none of the applied provisions apply to Territory Land or make unlawful conduct which is otherwise lawful under a Territory enactment, unless the contrary intention appears.

Subsection 5(3) ensures that a reference in a provision applied by subsection 5(1) to a relevant pre-Self-Government law, or to a provision of such a law, has effect as if it were a reference to an applied provision or provisions.

Subsections 5(4) to 5(10) provide that the particular matters or things which the named relevant pre-Self-Government laws regulate are limited, for the purposes of the applied provisions, to those matters or things as they relate to National Land. In the case of the City Area Leases Ordinance 1936, the City Area Leases Regulations, the Leases Ordinance 1918, the Leases Regulations and the Leases (Special Purposes) Ordinance 1925, this limitation is subject to the contrary intention appearing.

Paragraphs 5(5)(c) and 5(10)(b) also update a reference to a member of the Police Force of the Territory to a reference to a police officer.

Section 6 enables the Minister, acting on behalf of the Commonwealth, to enter into an arrangement with the Territory under which the Territory administers the applied provisions for the Commonwealth and provides the services of Territory public servants for that purpose.

Section 7 confers a regulation making power on the Minister.

Section 8 deals with transitional matters.

Subsection 8(1) ensures that a person who held an office or position before Self-Government Day under a provision which is an applied provision, continues to hold that office or position after Self-Government Day.

Subsection 8(2) ensures that instruments made, acts or things done or decisions made under a provision of a relevant pre-Self-Government law which is an applied provision, and which relate to National Land, continue as if made or done under an applied provision.

Subsection 8(3) deems a reference in a continued instrument to land or a matter related to land to be, after Self-Government Day, a reference to National Land or a matter related to National Land. Matters which occurred before Self-Government Day are not be affected by this provision.

The Schedule modifies the applied provisions. Few of the modifications affect the substantive law: most are formal changes to reflect the situation after Self-Government Day and to ensure the applied provisions have effect in relation to National Land

only. The opportunity has also been taken to delete or update obsolete citations or references and to make other minor changes in the interests of improved drafting style.

The modifications which affect the substantive law are described below.

CITY AREA LEASES ORDINANCE 1936

Section 4 is modified to ensure that the applied provisions will apply only to National Land within the City Area.

Subsection 19(8) is amended to make it clear that the relevant law for the purposes of subsection 19(1) is the City Area Leases Ordinance 1936 as it existed immediately before 1 January 1971.

Section 28AA be omitted. This removes a limitation on the Minister's discretion to issue a certificate that a building and development covenant in an individual lease, among several like leases in a subdivision under the Unit Titles Ordinance 1970, has been complied with.

Subsections 31(6) to 31(10) are omitted and new subsections 31(6), 31(7) and 31(8) substituted. The new provisions (which relate to sharing the costs of dividing fences) are to the same effect as the ones they replace, except that they apply only to parcels of land which were both leased at the time the fence was built and that, where National Land adjoins Territory Land, the applied provisions apply as if the Territory Land were National Land.

Subsection 32(3) provides that where a lease of National Land adjoins a lease of Territory Land, the Territory Land is treated as National Land for the purposes of section 32.

Section 37 is modified to ensure that the applied provisions of the Leases Ordinance 1918 do not apply to leases made or continued under the applied provisions of the City Area Leases Ordinance 1936.

CITY AREA LEASES REGULATIONS

Regulation 3 and the Schedule are omitted. This deletes a standard form of lease which is no longer relevant. By virtue of applied section 5 of the City Area Leases Ordinance 1936, the Minister retains full discretion to determine the form which leases of National Land in the City Area take.

LEASES ORDINANCE 1918

New subsection 4A(4) provides that, where National Land leased under this Ordinance adjoins Territory Land leased under the Leases Act 1918 of the Territory, the Territory Land is treated as National Land for the purposes of subsections 4A(2) and 4A(3). Those subsections deal with boundary fences.

LEASES (SPECIAL PURPOSES) ORDINANCE 1925

Subsection 6(5) is omitted and a new subsection substituted. It provides that, where National Land leased under the applied provisions of this Ordinance adjoins Territory Land leased under the City Area Leases Act 1936 or the Leases (Special Purposes) Act 1925 of the Territory, the Territory Land is treated as National Land for the purposes of sections 6(1) to 6(4). Those provisions deal with boundary fences.

Section 9 is amended to ensure that the applied provisions of the City Area Leases Ordinance 1936 or the Leases Ordinance 1918 do not apply to leases granted or continued under the applied provisions of this Ordinance.

ROADS AND PUBLIC PLACES ORDINANCE 1937

Subsection 15G(2) is omitted. This removes the requirement that the Administrative Appeals Tribunal, when reviewing a decision of the Minister or delegate concerning a permit granted under the Ordinance, be constituted by the Presidential Member alone.

Subsection 15G(3) is amended by omitting the definition of Presidential Member, made unnecessary by the omission of subsection 15G(2).

Sections 15S and 15T are omitted. This removes, in relation to National Land, the offence of obstructing a loading zone with an object other than a vehicle or a trailer.

TRESPASS ON COMMONWEALTH LANDS ORDINANCE 1932

Sections 3B and 3C are omitted. These provisions relate to trespassing on specified land which is Territory Land.

Paragraphs 8A(2)(e) and 8A(3)(c) are amended to ensure that exemptions from the prohibitions imposed in subsections 8A(2) and 8A(3) apply to Australian and Territory public servants and employees of Commonwealth and Territory statutory authorities.