

EXPOSURE DRAFT



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Australian Capital Territory National Land (Leased) Ordinance 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance.

Dated 2021

David Hurley
Governor-General

By His Excellency's Command

Nola Marino [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Minister for Regional Development and Territories
Parliamentary Secretary to the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development

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Part 1—Preliminary

1 Name

This Ordinance is the *Australian Capital Territory National Land (Leased) Ordinance 2021*.

2 Commencement

- (1) Each provision of this Ordinance specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Ordinance	1 April 2022.	

Note: This table relates only to the provisions of this Ordinance as originally made. It will not be amended to deal with any later amendments of this Ordinance.

- (2) Any information in column 3 of the table is not part of this Ordinance. Information may be inserted in this column, or information in it may be edited, in any published version of this Ordinance.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.

5 Simplified outline of this Ordinance

National Land is land within the Australian Capital Territory that the Commonwealth continues to manage following the establishment of self-government in the Territory.

This Ordinance provides for the grant of leases of National Land.

Leases may be granted for any purpose permitted by the National Capital Plan. This includes diplomatic purposes. Leases may be granted for up to 99 years.

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Many leases are nominal rent leases. For those that are not, this Ordinance deals with how rent is varied under those leases.

A lessee may apply to vary the purposes for which land may be used under the lease. This Ordinance sets out how the variation process works, and how to work out any lease variation charge payable for a change of purpose.

Some leases are subject to restrictions on dealings, and may be transferred or assigned only with the Minister's consent (for example, if the lease contains a building and development provision that has not been fully complied with). This Ordinance contains the requirements for obtaining the Minister's consent.

If improvements have been constructed on leased land, and the lease ends, the Commonwealth may be liable to pay the lessee the market value of those improvements. This Ordinance determines how that amount is worked out.

Relationships of lessees with neighbours are covered (for example, fences and party walls). Certain financial matters relating to leases are also covered.

This Ordinance sets out what happens if someone uses National Land for a purpose not permitted by a lease. It also covers how leases may come to an end, such as by surrender or termination.

There are some general provisions that apply to all leases.

The Minister has power to make a number of decisions under this Ordinance. Many of those decisions may be the subject of review by the Administrative Appeals Tribunal. A table of reviewable decisions is included.

Some of the leases covered by this Ordinance were in existence when this Ordinance commenced. The transitional provisions set out how the old law and this Ordinance relate to those continuing leases.

6 Definitions

In this Ordinance:

accredited valuer: see section 20.

arrangement means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

assessment day, in relation to determining the market value of improvements: see section 37.

Building Act means the *Building Act 2004* (ACT), as in force at the commencement of this Ordinance.

building and development provision means a provision of a lease that requires the lessee to carry out stated works on the land comprised in the lease, or on National Land adjacent to the land comprised in the lease, or both.

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Section 6

certificate of occupancy has the same meaning as in the Building Act, and includes a certificate of occupancy taken to have been issued under that Act.

certificate of regularisation has the same meaning as in the Building Act.

consolidation, in relation to a lease: see section 18.

dealing, in relation to a Division 4 lease: see section 24.

diplomatic purposes, in relation to a lease or other arrangement: see section 11.

Division 4 lease: see section 24.

full certificate of compliance, in relation to a building and development provision in a Division 4 lease: see section 27.

improvement, in relation to land, means a building or structure on or under the land.

instalment lease means a lease in relation to the grant of which the lessee has agreed to pay the consideration in instalments.

Land Titles Act means the *Land Titles Act 1925* (ACT), as in force at the commencement of this Ordinance.

lease means a lease granted, or continued in force, under this Ordinance.

Note: This Ordinance applies to leases of National Land in force immediately before the commencement of this Ordinance: see sections 65 and 66.

lease variation charge: see section 18.

lessee means the person who is the proprietor of a lease, whether or not the person is the registered proprietor of the lease, and regardless of how the person became the proprietor of the lease.

market value, in relation to improvements: see section 37.

Minister means:

- (a) in relation to an area of National Land designated, in writing, under paragraph 6(1)(g) of the Planning and Land Management Act as land required for the special purposes of Canberra as the National Capital—the Minister administering Part II of the Planning and Land Management Act; or
- (b) in relation to any other area of National Land—the Minister administering section 27 of the Planning and Land Management Act in so far as it relates to the declaration of land as National Land where the land is required for Commonwealth purposes other than for the special purposes of Canberra as the National Capital.

National Capital Plan means the plan prepared by the NCA under Part III of the Planning and Land Management Act.

National Land has the same meaning as in the Planning and Land Management Act.

NCA means the National Capital Authority.

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Note: The National Capital Authority is established under the Planning and Land Management Act.

NCA chief executive means the Chief Executive of the NCA.

partial certificate of compliance, in relation to a building and development provision in a Division 4 lease: see section 27.

party wall: see section 40.

Planning and Land Management Act means the *Australian Capital Territory (Planning and Land Management) Act 1988*.

prescribed fee means a fee prescribed by:

- (a) the rules; or
- (b) the NCA chief executive under section 63.

registered interest, in relation to a lease, means an interest registered under the Land Titles Act.

registrar-general means the registrar-general under the Land Titles Act.

restricted period, in relation to a dealing in a Division 4 lease: see section 24.

reviewable decision: see section 60.

road: see section 41.

road related area: see section 41.

rules means rules made under section 62.

subdivision, in relation to a lease: see section 18.

sublease means a sublease of:

- (a) a parcel of land, or part of a parcel of land, subject to a lease; or
- (b) a building, or part of a building, on a parcel of land subject to a lease.

sublessee means the person who is the proprietor of a sublease, whether or not the person is the registered proprietor of the sublease, and regardless of how the person became the proprietor of the sublease.

termination notice, in relation to a lease: see section 50.

Territory Act: see section 8.

Territory Land has the same meaning as in the Planning and Land Management Act.

unlawful occupier, in relation to National Land: see section 52.

variation, in relation to a lease: see section 16.

works approval means an approval issued by the NCA under paragraph 12(1)(b) of the Planning and Land Management Act.

7 Application and administration of Ordinance

Ordinance applies to National Land

- (1) Subject to this section, this Ordinance applies to National Land.

Management of National Land

- (2) With the approval of the Minister administering Part II of the Planning and Land Management Act, the NCA is to manage those areas of National Land designated in writing by that Minister as land required for the special purposes of Canberra as the National Capital.
- (3) All other areas of National Land are to be managed by the Minister administering section 27 of the Planning and Land Management Act in so far as that section relates to the declaration of such areas as National Land.

Water management on National Land

- (4) This Ordinance does not apply to the management, or regulation, of the taking of water on National Land.

Note: The ACT Executive has responsibility for the management and regulation of the taking of water on National Land (see subsections 6(2) and 29(1) of the Planning and Land Management Act).

Road transport laws on National Land

- (5) Nothing in this section limits the performance by the Minister administering the *National Land (Road Transport) Ordinance 2014* of functions under the provisions of Territory laws applied by that Ordinance.

8 Interaction with Territory Acts

- (1) Unless the contrary intention appears, this Ordinance does not:
 - (a) apply in relation to Territory Land; or
 - (b) make unlawful conduct that is lawful under a Territory Act.

Note: This Ordinance could apply in relation to Territory Land in some circumstances. For example, a lessee of Territory Land could be required to pay part of the cost of erecting a fence (see section 39) or a party wall (see section 40).

- (2) A ***Territory Act*** is:
 - (a) an Act passed by the Legislative Assembly for the Australian Capital Territory; or
 - (b) a law that is:
 - (i) an enactment within the meaning of the *Australian Capital Territory (Self-Government) Act 1988* by virtue of section 34 of that Act; or
 - (ii) taken to be an enactment by virtue of subsection 10(3) or 12(2) or (3) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

9 Occupancy or use of existing buildings

- (1) This section applies if:

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Section 9

- (a) the Minister grants a lease of National Land on which there are improvements at the time the lease is granted; and
 - (b) at that time, a certificate of regularisation has not been issued in relation to a building forming part of those improvements.
- (2) A person may occupy or use, or permit another person to occupy or use, the building or a part of the building whether or not a certificate of occupancy has been issued for the building or part of the building.
- (3) Nothing in this section prevents or restricts the application of the Building Act to:
- (a) the alteration, after the grant of the lease, of the improvements on the land at the time the lease is granted; or
 - (b) the construction, after the grant of the lease, of other improvements on the land.

Part 2—Leases of National Land

Division 1—Grant of leases

10 Power of the Minister to grant leases

Power to grant leases

- (1) Subject to this Ordinance, the Minister may, in the name of the Commonwealth, grant leases of National Land.

Consistency with National Capital Plan

- (2) The Minister may grant a lease only for purposes that are consistent with the National Capital Plan.

Terms on which leases may be granted

- (3) A lease must not be granted for a period exceeding 99 years.
- (4) A lease is otherwise subject to such terms, conditions or covenants as are:
 - (a) required by this Ordinance; or
 - (b) prescribed by the rules; or
 - (c) specified in the lease.

Methods by which leases may be granted

- (5) Subject to this Ordinance, the Minister may grant a lease by one or more of the following methods:
 - (a) auction;
 - (b) tender;
 - (c) ballot;
 - (d) direct grant.
- (6) If a lease is to be granted by auction, tender or ballot, the Minister must publish notice of the intention to conduct the auction, tender or ballot not less than 10 business days before doing so.
- (7) Notice under subsection (6) must be published:
 - (a) for a lease of National Land that is managed by the NCA (see subsection 7(2))—on the website of the NCA; or
 - (b) for a lease of any other National Land—on the website of the Department administered by the Minister mentioned in subsection 7(3).

Minister may cancel, vary or combine processes for granting leases

- (8) The Minister need not grant a lease under subsection (1), even if notice of an intention to do so has been published under subsection (6).

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Part 2 Leases of National Land

Division 1 Grant of leases

Section 11

(9) If applications for a lease have been invited subject to conditions, the Minister may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

(10) The Minister is not constrained by the method by which a lease is to be granted and may grant a lease by any permitted method or combination of methods.

Eligibility for the grant of a lease

(11) The rules may restrict eligibility for the grant of a lease under subsection (1) to a specified class of people.

(12) The Minister must not grant a lease to a person unless satisfied that the person is an eligible member of any class specified under subsection (11).

Capacity to comply with lease

(13) The Minister may make such enquiries as the Minister considers reasonable and necessary to establish the ability of a person to carry out the terms, conditions and covenants of a lease.

(14) The Minister must not grant a lease to a person unless satisfied that the person has the ability to carry out the terms, conditions and covenants of the lease.

Development leases

(15) A lease granted under this section may include provisions that require the lessee:

- (a) to develop the land comprised in the lease, or any unleased National Land, in a specified way; or
- (b) to enter into a development deed for the staged development of the land the subject of the lease; or
- (c) to give security for the performance of any of the lessee's obligations under the lease.

11 Grant of lease for diplomatic purposes

Meaning of diplomatic purposes

(1) A lease or other arrangement is granted or made for **diplomatic purposes** if:

- (a) it is granted to, or made with, the Government of a foreign country or an accredited agent of that Government; and
- (b) the lease or other arrangement permits any of the following uses (whether or not it also permits other uses):
 - (i) a diplomatic, consular or official use of the Government of a foreign country;
 - (ii) an official residence of the Government of a foreign country or of an accredited agent of that Government.

Lease may authorise arrangements with other foreign countries

(2) A lease granted for diplomatic purposes may authorise the Government of a foreign country, or an accredited agent of that Government, to enter, for diplomatic purposes, an arrangement described in subsection (3) with the

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Government of another foreign country or with an accredited agent of that Government.

Nature of arrangements with other foreign countries

- (3) A lease granted for diplomatic purposes may, but need not, include terms relating to the following arrangements:
 - (a) subleasing the whole or a part of the land for diplomatic purposes;
 - (b) entering into other arrangements with respect to the whole or a part of the land for diplomatic purposes;
 - (c) subdividing the land for diplomatic purposes.
- (4) A lease granted for diplomatic purposes may, but need not, relate to the whole or a part of premises that would otherwise be used for business or residential purposes.

12 Failure to accept and execute lease

Failure to accept lease and pay amounts before grant

- (1) This section applies if, within the period ending 20 business days after being given a lease for execution, a person who has been offered the grant of a lease under this Ordinance fails to:
 - (a) accept and execute the lease; or
 - (b) pay any money the person is required to pay before being granted the lease.

Notice of withdrawal of offer or right to grant of lease

- (2) The Minister may, by notice in writing given to the person, withdraw the offer or otherwise terminate the person's right to be granted the lease.
- (3) A notice given under subsection (2) must:
 - (a) state the grounds on which it is given; and
 - (b) specify the day on which it takes effect, which must be not less than 20 business days after the day it is given.

Notice may be given to proposed lessee's agent

- (4) This subsection applies if:
 - (a) a bid or an application for the grant of a lease has been made on behalf of a person (the ***proposed lessee***) by an agent of the proposed lessee; and
 - (b) the proposed lessee has not provided written confirmation to the Minister of the agent's authority to act or ratified the bid.
- (5) If subsection (4) applies, a notice under subsection (2) may be given to the agent of the proposed lessee.

No entitlement to compensation etc.

- (6) A person whose offer has been withdrawn or whose right to be granted a lease has ended under this section has no claim for compensation against the

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Part 2 Leases of National Land

Division 1 Grant of leases

Section 12

Commonwealth or for the recovery of any money paid to the Commonwealth in relation to the grant of the lease.

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Division 2—Rent review and relief from lease obligations

13 Review of Ministerial determination of rent

Scope

- (1) This section applies if:
 - (a) the rent payable under a lease is reviewed by the Minister in accordance with a power to do so under the lease; and
 - (b) the Minister has given the lessee written notice of the outcome of the review; and
 - (c) the lease does not provide a binding mechanism for independent determination if the Commonwealth and the lessee cannot agree on the amount of the rent, as reviewed.

Minister's reconsideration of reviewed rent

- (2) The lessee may, within the period ending 20 business days after being given notice of the reviewed rent or any longer period that the Minister allows, apply to the Minister in writing to reconsider the reviewed rent.
- (3) The making of an application does not affect the obligation of the lessee to pay the rent, as reviewed, or prevent the taking of action to enforce the obligation.
- (4) On an application, the Minister must:
 - (a) confirm the amount of the rent, as reviewed; or
 - (b) set aside the reviewed rent and substitute another amount of rent that the Minister considers appropriate.

14 Reduction of rent and relief from conditions

Lessee may apply for rent reduction or relief

- (1) A lessee (the **applicant**) may apply to the Minister for one or more of the following:
 - (a) a reduction (including to nil) of the rent payable under the lease;
 - (b) relief from compliance, completely or partly, with any other provision to which the applicant's lease is subject.
- (2) The application must be in writing and must specify the following:
 - (a) the lease that is the subject of the application;
 - (b) the amount of the reduction (if any) in the rent sought by the applicant;
 - (c) any other provisions of the lease from which applicant seeks relief, and the nature of the relief sought.
- (3) The application must be accompanied by the prescribed fee (if any).

Decision on application

- (4) On an application, the Minister must do one of the following:

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Part 2 Leases of National Land

Division 2 Rent review and relief from lease obligations

Section 14

- (a) approve the application on the terms sought by the applicant;
 - (b) approve the application on terms different from those sought by the applicant;
 - (c) refuse the application.
- (5) In considering an application, the Minister must have regard to:
- (a) all information provided in relation to the application; and
 - (b) any other matter the Minister considers relevant.

Terms and effect of approval

- (6) The Minister's approval under paragraph (4)(a) or (b) may be given subject to conditions.
- (7) If the Minister approves a reduction or relief under paragraph (4)(a) or (b), the liability or obligation of the applicant is discharged for the period approved, to the extent of the reduction or relief approved.

Division 3—Lease variations

15 Scope of Division

This Division does not apply to a lease granted solely for diplomatic purposes, whether before, on or after the commencement of this Ordinance.

16 Meaning of *variation* in relation to a lease

In this Division, each of the following is a *variation* of a lease:

- (a) a variation of the purpose for which the land under the lease may be used;
- (b) a variation of any related term, condition or covenant of the lease;
- (c) a consolidation or subdivision of the lease.

17 Process for variation of lease

Lessee may apply for variation of lease

- (1) A lessee (the **applicant**) may apply to the Minister for a variation of the lease.
- (2) The application must be accompanied by the prescribed fee (if any).

Decision on application

- (3) On an application, the Minister must do one of the following:
 - (a) approve the application on the terms sought by the applicant;
 - (b) approve the application on terms different from those sought by the applicant;
 - (c) refuse the application.
- (4) If the Minister approves the application under paragraph (3)(a) or (b), the Minister must determine the amount of lease variation charge (if any) payable for the variation of lease approved by the Minister.
- (5) The Minister may only approve a variation of lease that is consistent with the National Capital Plan.
- (6) In considering the application, the Minister must have regard to the following:
 - (a) the National Capital Plan;
 - (b) all information provided in relation to the application;
 - (c) any other matter the Minister considers relevant.

Timing and notification of decision

- (7) The Minister must make a decision in relation to an application:
 - (a) within the period ending 4 months after receiving the application; or
 - (b) if a longer period is agreed in writing by the Minister and the applicant—within that period; or
 - (c) if the Minister requests the applicant to provide further information—within whichever of the following periods ends last:

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Division 3 Lease variations

Section 18

- (i) the period mentioned in paragraph (a);
 - (ii) the period ending 20 business days after the day the further information is provided to the Minister;
 - (iii) the period agreed by the Minister and the applicant.
- (8) If the Minister does not make a decision in relation to the application within the period set out in subsection (7), the Minister is taken to have refused the application.
- (9) The Minister must give the applicant written notice of the Minister's decision.
- (10) If the Minister approves the application, the notice must:
- (a) set out the variations to the lease that have been approved; and
 - (b) specify how the lease variation charge has been worked out; and
 - (c) specify the day by which the lease variation charge must be paid; and
 - (d) include an instrument or instruments to give effect to the approved variations to the lease.
- Note: The instruments that effect the approved variations may be, or include, a surrender of lease and grant of a new lease.
- (11) If the Minister refuses to approve the application, the notice must include reasons for the refusal.
- (12) Subsection (11) does not apply to a decision that is a refusal to approve the application taken to be made under subsection (8).

18 Amount of lease variation charge

Working out the amount of lease variation charge

- (1) A **lease variation charge**, in relation to an application to vary a lease, is an amount worked out using this formula:

$$\left(V_1 - V_2 \right) \times 75\%$$

where V_1 and V_2 are amounts worked out using the table in subsection (2).

- (2) Use the following table to work out V_1 and V_2 for the purposes of the formula in subsection (1):

Lease variation charge—amount of V_1 and V_2		
	For a variation that is a consolidation or subdivision	For any other variation
1	V_1 an amount equal to the capital sum that the new lease or leases to be granted under the consolidation or subdivision might be expected to realise if: <ul style="list-style-type: none">(a) the consolidation or subdivision were to take place as proposed; and(b) the new lease or leases were genuinely offered for sale	an amount equal to the capital sum that the lease might be expected to realise if: <ul style="list-style-type: none">(a) the lease were varied as approved by the Minister; and(b) the lease were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and

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Lease variation charge—amount of V_1 and V_2

	For a variation that is a consolidation or subdivision	For any other variation
	immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and (c) the rent payable throughout the term of the new lease or leases were a nominal rent	(c) the rent payable throughout the term of the lease or, for a variation that involves the surrender of a lease and the grant of a new lease, the new lease, were a nominal rent
2	V_2 an amount equal to the capital sum that the lease or leases to be surrendered under the consolidation or subdivision might be expected to realise if: (a) no consolidation or subdivision were to take place during the remainder of the term of the surrendered lease or leases; and (b) the lease or leases were genuinely offered for sale immediately before the consolidation or subdivision on the reasonable terms and conditions that a genuine seller would require; and (c) the rent payable throughout the term of the lease or leases to be surrendered were a nominal rent	an amount equal to the capital sum that the lease might be expected to realise if: (a) the lease were not varied during the remainder of its term; and (b) the lease were genuinely offered for sale immediately before the application for the variation on the reasonable terms and conditions that a genuine seller would require; and (c) the rent payable throughout the term of the lease, or the lease to be surrendered, were a nominal rent

*Meaning of **consolidation** and **subdivision***

- (3) A variation of a lease by way of **consolidation** means the surrender of 2 or more leases held by the same lessee and the grant of a new lease or leases to the lessee to consolidate the parcels of land comprised in the surrendered leases; and
- (4) A variation of a lease by way of **subdivision** means the surrender of one or more leases held by the same lessee, and the grant of new leases to the lessee to subdivide the parcels of land in the surrendered leases.

Treatment of improvements

- (5) In working out V_1 and V_2 under subsection (2), an improvement in relation to the land comprised in the lease must not be taken into account.
- (6) However, the value of any work carried out by way of clearing, filling, grading, draining, levelling or excavating the land may be taken into account.

Lease variation charge may be nil

- (7) The lease variation charge is nil if the amount worked out as V_1 is equal to or less than the amount worked out as V_2 .

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Part 2 Leases of National Land

Division 3 Lease variations

Section 19

19 Payment of lease variation charge

When lease variation charge must be paid

- (1) A lease variation charge must be paid:
 - (a) no later than 60 days after the notice of the Minister's decision specifying the charge has been given to the lessee under subsection 17(9); or
 - (b) if a later day is specified in the Minister's decision—by that later day.

Review rights not affected by payment

- (2) Payment of a lease variation charge determined by the Minister under subsection 17(4) does not affect any right a lessee has to apply under section 60 for review of that decision by the Administrative Appeals Tribunal.

Lapse of lease variation approval

- (3) An approval of a variation of lease under section 17 lapses if:
 - (a) the amount of the lease variation charge that has been determined by the Minister as payable for the variation is not paid by the day it is due to be paid; and
 - (b) the lessee has not, on or before that day, applied to the Administrative Appeals Tribunal to review the determination of the amount of the lease variation charge.

No variation until lease variation charge paid

- (4) The Minister must not execute an instrument that gives effect to a variation of lease in relation to an approval by the Minister under section 17 unless the lessee has paid the lease variation charge for the variation.

20 Conditions on application for review of lease variation charge

Application to include independent valuation

- (1) An application to the Administrative Appeals Tribunal to review the amount of lease variation charge determined by the Minister under subsection 17(4) must include an independent valuation of the amount of the charge.

Who may prepare independent valuation

- (2) The valuation must be prepared by an accredited valuer who was not involved in working out or advising on the Minister's determination of the amount of the lease valuation charge.
- (3) An **accredited valuer** is a valuer who:
 - (a) is accredited by the Australian Property Institute Incorporated or another entity prescribed by the rules; and
 - (b) has not less than 5 years' experience in valuing commercial leasehold interests.

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21 Reduction of lease variation charge

- (1) This section applies if:
 - (a) a lessee applies to the Administrative Appeals Tribunal to review the amount of lease variation charge determined by the Minister under subsection 17(4); and
 - (b) following the review, the Tribunal reduces the amount of the charge.
- (2) If the lease variation charge has been paid, an amount equal to the amount by which the charge is reduced by the Tribunal must be refunded to the lessee.

22 Minister may remit or refund lease variation charge

- (1) The Minister may remit or refund the whole or part of an amount of lease variation charge under this Division if the Minister is satisfied that there are special circumstances that make it fair and reasonable to do so.
- (2) The Minister may do so on the Minister's own initiative or on written application by the lessee.

EXPOSURE DRAFT

Part 2 Leases of National Land

Division 4 Restrictions on dealing with certain leases

Section 23

Division 4—Restrictions on dealing with certain leases

23 Scope of Division

This Division does not apply to a lease granted solely for diplomatic purposes, whether before, on or after the commencement of this Ordinance.

24 Division 4 leases—restricted periods and dealings

Division 4 leases and restricted periods

- (1) For each kind of **Division 4 lease** set out in column 1 of an item in the following table, the **restricted period** is the period set out in column 2 of the item.

Division 4 leases—restricted periods		
Item	Column 1	Column 2
	Kind of Division 4 lease	Restricted period
1	a lease that provides the lessee cannot, during the restricted period, deal with the lease or the land, or part of the land, comprised in the lease without the written consent of the Minister	the period stated in the lease or, if no period is stated, the term of the lease
2	a lease: (a) that contains a building and development provision; and (b) in relation to which a full certificate of compliance has not been issued under subsection 27(3)	the period ending on the day of the issue of a full certificate of compliance under subsection 27(3) in relation to the lease
3	a lease in relation to which the class of people eligible for the grant of the lease is restricted under subsection 10(11)	the period ending 5 years after the day the lease is granted
4	an instalment lease in relation to which a certificate has not been issued under subsection 27(8) stating that the lessee's liability for instalments under the lease has been discharged	the period ending on the day of the issue of a certificate under subsection 27(8) in relation to the lease
5	a lease prescribed by the rules	the period prescribed by the rules

Dealings in Division 4 leases

- (2) Each of the following is a **dealing** in a Division 4 lease:
- (a) an assignment or transfer of the lease;
 - (b) a parting with possession of the land comprised in the lease or any part of it;
 - (c) a dealing prescribed by the rules.
- (3) However, subject to section 29 (about arrangements made to avoid the restriction on dealings in this Division), the grant of a sublease is not a dealing in relation to

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a Division 4 lease, whether made before, on or after the commencement of this Ordinance.

Exemption of Division 4 leases

- (4) The Minister may, by notifiable instrument, exempt a Division 4 lease from the application of this Division in relation to a particular dealing.

25 Consent to dealings in Division 4 leases

Dealing in a Division 4 lease without consent

- (1) Subject to subsection (2), a dealing in a Division 4 lease that is made or entered into without the written consent of the Minister has no effect.
- (2) Subsection (1) only applies during the restricted period for the Division 4 lease.

Note: For the meaning of *restricted period* in relation to a Division 4 lease, see subsection 24(1).

Application for consent to a dealing

- (3) A lessee or other party to a proposed dealing (the *applicant*) may apply to the Minister for consent to a dealing in a Division 4 lease.
- (4) The application must be accompanied by the prescribed fee (if any).

Decision about consent

- (5) On an application, the Minister may do one of the following:
- (a) consent to the dealing unconditionally;
 - (b) consent to the dealing subject to reasonable conditions;
 - (c) refuse consent to the dealing.
- (6) The Minister must not consent to a dealing in a Division 4 lease unless the Minister is satisfied that:
- (a) if the lease is one in relation to which eligibility for the grant of the lease is restricted to a class of people—the person proposed to be the lessee, after the dealing, is a member of that class; and
 - (b) if the lease contains a building and development provision—the person proposed to be the lessee after the dealing gives to the Minister such security (if any) as the Minister requires for compliance with the building and development provision; and
 - (c) in any case—the person proposed to be the lessee after the dealing has the ability to carry out the terms, conditions and covenants of the lease.
- (7) The validity of a dealing in a Division 4 lease made or entered into with the consent of the Minister is not affected:
- (a) by a defect or irregularity in relation to the giving of the consent; or
 - (b) because a ground, or all grounds, for the consent had not arisen.

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Part 2 Leases of National Land

Division 4 Restrictions on dealing with certain leases

Section 26

26 Registration of Division 4 leases

- (1) If a lease is a Division 4 lease, the Minister must advise the registrar-general accordingly.
- (2) The registrar-general may make a memorial in the land titles register stating:
 - (a) that the lease is a Division 4 lease; and
 - (b) the restricted period for the lease.
- (3) Subsection 25(1) does not apply to a dealing in a Division 4 lease if the dealing is registered under the Land Titles Act.

27 Certificates of compliance and discharge of liability

Certificates of compliance—building and development provision

- (1) A lessee under a Division 4 lease that contains a building and development provision may apply to the Minister for a certificate under subsection (3) or (4).
- (2) The application must be accompanied by the prescribed fee (if any).
- (3) If the Minister is satisfied that the building and development provision in a Division 4 lease has been fully complied with, the Minister must issue a certificate (a **full certificate of compliance**) in relation to the lease.
- (4) If the Minister is satisfied that the building and development provision in a Division 4 lease has been partly complied with, and it is appropriate to issue a certificate in relation that compliance, the Minister must issue a certificate (a **partial certificate of compliance**) in relation to the lease.
- (5) A partial certificate of compliance may be issued subject to a condition that the lessee provide to the Minister security in a specified form and amount against failure to complete outstanding work specified in the certificate.

Certificate of discharge of liability—instalment lease

- (6) A lessee under a Division 4 lease that is an instalment lease may apply to the Minister for a certificate stating that the lessee's liability for instalments under the lease has been discharged.
- (7) The application must be accompanied by the prescribed fee (if any).
- (8) The Minister must, if satisfied that all instalments under the instalment lease have been paid, issue a certificate stating that the lessee's liability for instalments under the lease has been discharged.

Notice to registrar-general

- (9) If the Minister issues a certificate in relation to a Division 4 lease under this section, the Minister must give a copy of the certificate to the registrar-general as soon as reasonably practicable after the certificate is given to the lessee.
- (10) Subsection (11) applies if the Minister has issued:
 - (a) a full certificate of compliance; or

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(b) a certificate under subsection (8).

- (11) If this subsection applies, the registrar-general may make a memorial in the land titles register, in relation to the Division 4 lease, stating that the restriction on dealings under subsection 25(1) no longer applies to the lease.

28 Dealings entered into subject to Minister's consent

- (1) Nothing in this Division prevents a dealing that is entered into in relation to a Division 4 lease from being made conditional on obtaining the Minister's consent to the dealing under subsection 25(5).
- (2) Subsection 25(1) is not contravened in relation to a dealing in a Division 4 lease if:
- (a) the dealing is made conditional on obtaining the Minister's consent under subsection 25(5); and
 - (b) an application for the Minister's consent is made within the period ending 3 months after the day the dealing is entered into; and
 - (c) the Minister consents to the dealing within the period ending 6 months after the day the dealing is entered into.

29 Arrangements to avoid restrictions on dealings

Any arrangement entered into that is intended to, or has the effect of, avoiding or preventing a restriction under, or the effect of, this Division, whether directly or indirectly, on a dealing in a Division 4 lease is of no effect.

Note: This section may apply in relation to a dealing in a Division 4 lease that is a grant of a sublease: see subsection 24(3).

30 Validity of certain dealings with leases not affected by this Division

Nothing in this Division affects the validity of a dealing in relation to a Division 4 lease if the dealing is made in any of the following circumstances:

- (a) the lessee has died;
- (b) the dealing is made under any of the following orders:
 - (i) an order of Division 1 of the Federal Circuit and Family Court of Australia;
 - (ii) an order of another court having jurisdiction under the *Family Law Act 1975*;
 - (iii) an order under the *Domestic Relationships Act 1994 (ACT)*, adjusting the property interests of the parties in a domestic relationship;
- (c) the dealing happens by operation of, or under, a law relating to bankruptcy or insolvency;
- (d) the dealing is the transfer or assignment of the lease by a mortgagee in exercising the mortgagee's power of sale;
- (e) the dealing in the lease occurs by operation of law.

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Part 2 Leases of National Land

Division 5 Subleasing

Section 31

Division 5—Subleasing

31 Leased land to be held as undivided parcel

- (1) The land comprised in a lease must at all times be held and occupied by or from the lessee as one undivided parcel, unless section 32 applies.
- (2) The land comprised in a lease may be sublet and may be transferred, assigned or mortgaged, along with any interest in the land, unless this Ordinance or the lease provides otherwise.

32 Power of lessee to sublet part of building

- (1) Any part of a building on land comprised in a lease may, subject to the lease, any sublease of the land and this Ordinance, be sublet separately from the remainder of the building.
- (2) A sublease may cover both:
 - (a) part of a building on land comprised in a lease; and
 - (b) another part of the land comprised in the lease that does not have the building on it.

Division 6—Improvements

33 Application of Division

Scope—improvements undertaken or acquired by the Commonwealth or Territory

- (1) This Division applies to an improvement on land if:
 - (a) the improvement is on land that is or was subject to a lease; and
 - (b) the improvement was undertaken or acquired by the Commonwealth or the Territory, whether before or after the grant of the lease; and
 - (c) the Commonwealth has received, or is entitled to receive, payment for the improvement:
 - (i) under the lease; or
 - (ii) in connection with the grant of the lease.

Scope—excluded improvements

- (2) Subject to subsection (3), this Division does not apply to improvements to land if:
 - (a) the improvements contravene the lease of the land; or
 - (b) in a case in which works approval is required for the improvements—such approval has not been obtained; or
 - (c) occupation or use of the improvements is or would be unlawful under the Building Act.
- (3) Despite paragraph (2)(c), this Division applies to improvements the occupation or use of which is allowed under section 9.

Note: Subsection 9(2) allows the lawful occupancy or use, in certain circumstances, of buildings for which there is no certificate of occupancy or certificate of regularisation.

34 Renewing lessee not liable to pay for improvements

- (1) This section applies if:
 - (a) the term of a lease expires; and
 - (b) there are improvements on the land comprised in the lease; and
 - (c) the lessee is granted a further lease of the land or part of it.
- (2) Subject to any contrary provision in the lease, the lessee is not liable to pay to the Commonwealth the value of the improvements on the land or part of the land covered by the further lease.

35 Commonwealth to pay lessee for certain improvements

Commonwealth's liability to pay for improvements

- (1) This section applies if:
 - (a) the term of a lease expires; and

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Part 2 Leases of National Land

Division 6 Improvements

Section 35

- (b) there are improvements to which this Division applies on the land comprised in the lease at the time of expiry; and
 - (c) there is no provision in the lease that precludes or limits the right of the lessee to payment in relation to the improvements; and
 - (d) the lessee is not granted a further lease of the land, or is granted a lease of only part of the land.
- (2) The Commonwealth is liable to pay to the lessee:
- (a) if no further lease of the land is granted to the lessee—the market value of the improvements on the land; or
 - (b) if a further lease of only part of the land is granted to the lessee—the market value of the improvements on the part of the land not included in the further lease.

Period within which lessee must be paid

- (3) An amount that the Commonwealth is liable to pay the lessee under subsection (2) must be paid within the following period:
- (a) if the Commonwealth does not propose to grant a further lease of the land to any person—within the period ending 3 months after the expiry of the lease;
 - (b) if the Commonwealth leases any part of the land to another person within 6 months after the expiry of the lease—within the period ending 3 months after the grant of that lease;
 - (c) in any other case—within the period ending 6 months after the expiry of the lease.

Deduction of leasing expenses from payment to lessee

- (4) This subsection applies if:
- (a) the Commonwealth is liable to pay to the lessee an amount under subsection (2); and
 - (b) before the expiry of the lease (the *original lease*), the Minister offers the lessee a grant of a further lease of the land comprised in the lease, or of part of the land; and
 - (c) the lessee does not take the further lease; and
 - (d) the Commonwealth grants a lease of the land comprised in the lease, or part of the land, to another person; and
 - (e) the original lease was not granted for diplomatic purposes.
- (5) If subsection (4) applies, the Minister must deduct from the amount payable to the lessee the amount of any expenditure reasonably incurred by the Commonwealth in relation to the grant of a lease of the land, or a part of the land, to another person.

Commonwealth to account for revenue received from improvements

- (6) The Commonwealth must pay to a lessee the amount set out in subsection (7) if:
- (a) the term of the lease expires; and
 - (b) there are improvements to which this Division applies on the land comprised in the lease; and
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- (c) in relation to the period (the *relevant period*) after the expiry of the lease and before the Commonwealth leases the land, or part of the land, to another person, the Commonwealth receives revenue attributable in whole or part to the improvements.
- (7) The Commonwealth must pay to the lessee an amount equal to the revenue received by the Commonwealth for the relevant period less the reasonable maintenance and other costs incurred by the Commonwealth in relation to the improvements for that period.

36 Payment for improvements where lease surrendered or terminated

Scope

- (1) This section applies to a lease if:
- (a) the lease is surrendered or terminated; and
 - (b) in a case in which the lease contains a building and development provision—on the day of surrender or termination, a full certificate of compliance has been issued.

Commonwealth's liability to pay for improvements

- (2) Subsections 35(1) to (3) apply in relation to the lease as if the term of the lease had expired on the day the lease was surrendered or terminated.

Deduction of surrender and termination expenses from payment to lessee

- (3) The Minister must deduct from any amount payable to the lessee the amount of any expenditure reasonably incurred by the Commonwealth in relation to:
- (a) the surrender or termination of the lease; and
 - (b) the grant of a lease of the land, or a part of the land, to another person.

37 Determining market value of improvements

Meaning of assessment day and market value

- (1) The *assessment day*, in relation to determining the market value of improvements on land, is:
- (a) if the term of the lease has expired—the day the term expired; or
 - (b) if the lease has been terminated or surrendered—the day the lease was terminated or surrendered.
- (2) The *market value* of improvements on land is the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale on the open market on the day before the assessment day on the reasonable terms and conditions that a genuine seller might require.

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Part 2 Leases of National Land

Division 6 Improvements

Section 37

Process for determining market value of improvements

- (3) If the Commonwealth is required under this Division to pay a lessee the market value of improvements on land, the Minister must, as soon as reasonably practicable after the assessment day:
 - (a) determine the market value of the improvements on the land as at the assessment day; and
 - (b) give the lessee written notice of the determination.
- (4) In determining the market value of the improvements, the Minister must:
 - (a) in the case of a lease that has expired—assume that a further lease of the land had been granted subject to the same provisions, and for the same term, as the lease the term of which has expired; and
 - (b) in the case of a lease that was terminated or surrendered—assume that the lease had not been terminated or surrendered.
- (5) The Minister must give the lessee a copy of the Minister's determination under subsection (3) within the period ending 20 business days after the day the determination is made.

Division 7—Shared infrastructure and access

38 Scope of Division

Unless otherwise specified, this Division applies in relation to:

- (a) land regardless of whether it is National Land or Territory Land; and
- (b) a lessee of Territory Land in the same way it applies to a lessee of National Land.

39 Fences

Scope

- (1) This section applies to a lessee if:
 - (a) the land comprised in the lessee's lease adjoins another parcel of land (the ***adjoining land***) that is not part of the lessee's lease; and
 - (b) one of the parcels of land is National Land;
 - (c) there is no fence on the common boundary between the parcels of land.

Minister may direct fence to be erected

- (2) The Minister may:
 - (a) if the adjoining land is not subject to a lease—by written notice direct the lessee to erect a fence on the common boundary; or
 - (b) if the adjoining land is subject to a lease—by written notice direct the lessees jointly to erect a fence on the common boundary.
- (3) A direction must specify:
 - (a) the type and standard of the fence to be erected; and
 - (b) the part of the boundary on which it is to be erected; and
 - (c) the period within which the fence must be erected.
- (4) If a fence is not erected in compliance with a direction under subsection (2) within the period ending 20 business days after the day the direction is given, or such longer period allowed by the Minister:
 - (a) the Minister may, at the cost of the lessee, cause the fence to be erected; and
 - (b) the lessee must pay to the Minister, on demand, an amount determined by the Minister as the cost of erecting the fence or as the proportion of the cost payable by the lessee.

Note: Subsection (4) does not apply to a continuing lease that was granted under the applied provisions of the *Leases Ordinance 1918*: see section 73.

Fences shown in approved plans

- (5) This subsection applies if:
 - (a) a works approval or approved plans under the Building Act show a fence on a common boundary or part of the boundary between 2 parcels of land; and

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Part 2 Leases of National Land

Division 7 Shared infrastructure and access

Section 40

- (b) one of the parcels of land is National Land; and
 - (c) both parcels of land are leased.
- (6) If subsection (5) applies:
- (a) one of the lessees may erect a fence in compliance with the works approval or approved plans; and
 - (b) the lessee who erected the fence may, by proceedings in a court of competent jurisdiction commenced within the period ending 6 months after commencement of the erection of the fence, recover half the cost of doing so (less depreciation) from the other lessee.

40 Party walls

Scope

- (1) This section applies if a works approval or approved plans under the Building Act show a party wall to be erected between 2 parcels of land, one of which is National Land.

Meaning of party wall

- (2) A **party wall**:
- (a) is a wall or structure designed for the common use of 2 or more buildings and erected, or to be erected, on a common boundary, or part of that boundary, between 2 parcels of land, and extending laterally into each of those parcels of land; and
 - (b) includes any wall that is completely or partly used to support 2 or more buildings, if the wall was erected in connection with a building for which there is a certificate of occupancy under the Building Act.

Erection and maintenance of party walls

- (3) The lessee of each parcel of land may, during the term of the lease:
- (a) erect, maintain and use a party wall in the position shown on the works approval or approved plans; and
 - (b) use any party wall so erected for the support of the building or buildings provided for, or shown, in the works approval or approved plans.
- (4) The lessees of the 2 parcels of land may agree on which lessee will erect the party wall and in what proportions the cost of doing so is to be borne by them.

Payment of costs of party walls

- (5) If the lessee of one parcel of land (the **first lessee**) has, at the first lessee's expense, erected a party wall, the lessee of the other parcel of land must immediately after beginning to erect a building on the other parcel of land pay to the first lessee a proportion of the cost of the erection of the party wall.
- (6) In apportioning the cost of erecting the party wall, a reasonable allowance must be made for depreciation of the party wall if any period has elapsed between:
- (a) the date of the completion of the party wall by the first lessee; and

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- (b) the date of the beginning of the erection of a building on the other parcel of land.
- (7) If the lessees cannot agree about the apportionment of the cost of erecting the party wall, the Minister may, at the request of either lessee, by notice in writing given to the lessees, determine the cost of erecting the party wall and the proportion of the cost to be borne by each lessee.
- (8) The amount agreed on by the lessees, or determined by the Minister, as payable by one lessee to the other lessee under this section is a debt due and recoverable by the other lessee in any court of competent jurisdiction.

41 Road access to and from leased land

Access to leased land

- (1) The Minister must ensure that each lessee continues to have:
- (a) direct access to the leased land from a road; or
 - (b) access to the leased land from a road or road related area by way of an access track, or other way, that the lessee may use for entry or exit only, without charge and at any hour of the day or night.
- (2) Access (***vehicle access***) mentioned in paragraph (1)(b):
- (a) must not interfere with a building, garden or stockyard on the land through which the vehicle access is provided at the time the vehicle access is provided; and
 - (b) must be located so as to minimise the damage or inconvenience to any lessee of that land.

Meaning of road and road related area

- (3) A ***road*** is:
- (a) a public road on National Land within the meaning of the *Australian Capital Territory National Land (Unleased) Ordinance 2021*; or
 - (b) a road on Territory Land within the meaning of the *Road Transport (General) Act 1999 (ACT)*, as in force at the commencement of this Ordinance.
- (4) A ***road related area*** is:
- (a) in relation to a road mentioned in paragraph (3)(a)—a road related area on National Land within the meaning of the *Australian Capital Territory National Land (Unleased) Ordinance 2021*; or
 - (b) in relation to a road mentioned in paragraph (3)(b)—a road related area on Territory Land within the meaning of the *Road Transport (General) Act 1999 (ACT)*, as in force at the commencement of this Ordinance.

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Part 2 Leases of National Land

Division 8 Financial matters relating to leases

Section 42

Division 8—Financial matters relating to leases

42 Survey fees

- (1) The Minister may arrange for a survey of the land contained in a lease.
- (2) The lessee must pay to the Minister, on demand, the amount determined by the Minister as the reasonable cost of the survey.

Note: Subsection (2) does not apply to certain continuing leases granted under the applied provisions of the *Leases Ordinance 1918* or the *Leases (Special Purposes) Ordinance 1925*: see subsection 74(2).

43 Assessment of value of leases and lands

- (1) The Minister may, from time to time, assess the value of a lease or the land comprised in a lease.
- (2) For the purposes of subsection (1), the Minister may authorise persons to enter onto the land the subject of a lease, at reasonable times and on reasonable notice, with such equipment as is reasonably necessary.
- (3) The Minister must give the lessee a copy of the assessment within a reasonable time after the assessment has been carried out.
- (4) This section does not apply to a lease granted for diplomatic purposes.

44 Recovery of amounts owing

If an amount is owing by a lessee under this Ordinance or a lease, the Minister may, on behalf of the Commonwealth, recover the amount as a debt due from the lessee to the Commonwealth in a court of competent jurisdiction.

Division 9—Use of land for unauthorised purposes

45 Use of land for leased purpose

National Land in relation to which a lease has been granted, or a building or structure on the land, must not be used for a purpose other than a purpose authorised by the lease.

46 Injunctions to restrain use of leased land for unauthorised purpose

- (1) This section applies if:
 - (a) National Land has been used, is being used or is proposed to be used for a purpose other than a purpose authorised by a lease granted in relation to the land; and
 - (b) the use is by, or permitted by, a lessee, sublessee or licensee of the land.
- (2) The Minister or anyone else whose interests are, or would be, affected by the use may apply to the Supreme Court for an injunction to restrain the use of the land for the unauthorised purpose.
- (3) On an application under subsection (2), the Supreme Court may grant an injunction:
 - (a) restraining the lessee, the sublessee, the licensee or any other person from the use of the land; and
 - (b) if satisfied that it is desirable to do so—requiring the lessee, the sublessee, the licensee or any other person to do any specified thing.

47 Keeping of touring vehicles on land used for residential purposes

Meaning of touring vehicle

- (1) A **touring vehicle** is a caravan or mobile home, whether or not fixed to the ground.

Keeping 2 or more touring vehicles on residential land prohibited

- (2) A person commits an offence if:
 - (a) the person keeps, or allows to be kept, 2 or more touring vehicles on land; and
 - (b) the land is leased National Land; and
 - (c) the lease is for residential purposes only; and
 - (d) no approval under subsection (5) is in force for those vehicles.

Penalty: 1 penalty unit.

- (3) Strict liability applies to paragraphs (2)(b), (c), and (d).
- (4) A person who contravenes subsection (2) commits a separate offence in respect of each day during which the contravention continues.

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Part 2 Leases of National Land

Division 9 Use of land for unauthorised purposes

Section 47

Approval to keep 2 or more touring vehicles

- (5) A lessee of National Land for which the only authorised use under the lease is residential purposes may apply to the Minister for approval to keep 2 or more touring vehicles on the land comprised in the lease.
- (6) The application must be accompanied by the prescribed fee (if any).
- (7) On an application, the Minister may:
 - (a) approve the application; or
 - (b) refuse to approve the application.

Division 10—Surrender of leases

48 Lessee may surrender lease or part of land in lease

- (1) A lessee may, at any time, apply to the Minister to surrender the lease or part of the land comprised in the lease.

Note: A lessee who surrenders a lease may be entitled to compensation for improvements: see section 36.

- (2) On an application, the Minister may:
 - (a) agree to accept a surrender of the lease, or part of the land comprised in the lease:
 - (i) unconditionally; or
 - (ii) subject to any condition the Minister considers appropriate; or
 - (b) refuse to accept a surrender of the lease, or part of the land comprised in the lease.
- (3) The surrender of a lease, or part of the land comprised in a lease, does not entitle the lessee to a refund or remission of any rent already paid or owing.
- (4) Despite subsection (3), the Minister may authorise, in accordance with any rules made for the purposes of this subsection, the payment by the Commonwealth to the lessee of an amount equal to part or all of a refund mentioned in that subsection.

49 Commencement of further lease granted after surrender of lease

- (1) This section applies if a lessee:
 - (a) surrenders one or more leases; and
 - (b) is granted in substitution a further lease (the *new lease*).
- (2) This section applies whether or not the new lease contains the land, or part of the land, comprised in the surrendered lease or leases.
- (3) Subject to subsection (4), the commencement date of the new lease is to be the same as that in the surrendered lease or leases if:
 - (a) only one lease is surrendered; or
 - (b) 2 or more leases are surrendered and they have the same commencement date.
- (4) If the lease or leases are surrendered in connection with the Minister's approval of a variation of lease under Division 3, the commencement date of the new lease is the date determined by the Minister.

EXPOSURE DRAFT

Section 50

Division 11—Termination of leases

50 Minister's power to terminate lease

- (1) The Minister may, by written notice (the *termination notice*) given to a lessee, terminate the lease if:
 - (a) the lessee contravenes the lease; and
 - (b) the Minister has complied with section 51.
- (2) The termination notice takes effect immediately after the end of the following period:
 - (a) if the lease does not provide for a period for rectifying the contravention—the period of 20 business days starting after the day the notice is given;
 - (b) if the lease provides for a period for rectifying the contravention—whichever of the following periods ends later:
 - (i) the period of 20 business days starting after the day the notice is given;
 - (ii) the period specified in the lease for rectifying the contravention.

Note: There are special rules that apply to the termination of continuing leases: see section 72 (for continuing leases granted under the *Leases Ordinance 1918*) and section 75 (for other continuing leases).

Notifying the registrar-general etc. of lease termination

- (3) As soon as reasonably practicable after the termination notice is given to the lessee, the Minister must give a copy of the termination notice to:
 - (a) the registrar-general; and
 - (b) any other person who has a registered interest in the lease, or in the land comprised in the lease.
- (4) The validity of the termination notice is not affected by a failure to comply with subsection (3).

51 Steps before giving termination notice

- (1) The Minister must not terminate a lease under subsection 50(1) unless:
 - (a) the notices required by subsections (2) and (3) have been given; and
 - (b) the Minister has considered the reasons (if any) submitted by the lessee in accordance with paragraph (2)(c).
- (2) The Minister must give a notice in writing to the lessee:
 - (a) specifying the contraventions of the lease in respect of which the notice is given; and
 - (b) stating that the Minister is considering terminating the lease; and
 - (c) inviting the lessee to submit to the Minister written reasons, within the period ending not later than 15 business days after the lessee is given the notice, why the lessee considers that the lease should not be terminated.

- (3) As soon as reasonably practicable after the Minister gives a notice to a lessee under subsection (2), the Minister must give a copy of the notice to any person with a registered interest in the lease or in the land comprised in the lease.

52 Recovery of lands by Commonwealth

Meaning of unlawful occupier

- (1) A person is an **unlawful occupier** if:
- (a) the person was a lessee of National Land; and
 - (b) the lease has expired, or been surrendered or terminated; and
 - (c) the person remains in possession or occupation of the land.

Demand for possession

- (2) The Minister may, by written notice (a **demand notice**) given to an unlawful occupier, demand that the unlawful occupier give possession of the land to the Commonwealth within the reasonable period specified in the demand notice, being a period ending not less than 10 business days after the day the demand notice is given.

Non-compliance with demand notice

- (3) If a demand notice is not complied with:
- (a) the Minister may apply to the Magistrates Court for an order that possession of the land be given to the Commonwealth; and
 - (b) the court may issue a warrant authorising a police officer, within the period ending 20 business days after the day the warrant is issued, to enter the land with such assistance and using such force as is necessary and reasonable, to recover possession of the land for the Commonwealth.

53 Evidence of ending of lease

- (1) The Minister may certify in writing that a lease mentioned in the certificate has expired, or been surrendered or terminated.
- (2) The certificate is prima facie evidence of the matters stated in it.

EXPOSURE DRAFT

Part 2 Leases of National Land

Division 12 General provisions applying to leases

Section 54

Division 12—General provisions applying to leases

54 Reservation of minerals

- (1) There is reserved to the Commonwealth in every lease all minerals and other substances in, on or under the land comprised in the lease, including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, earth, sand, gravel, stones and clay.
- (2) Nothing in subsection (1) prevents the extraction of minerals or other substances from National Land that is authorised under:
 - (a) a works approval; or
 - (b) a permit granted under the *Australian Capital Territory National Land (Unleased) Ordinance 2021*.

55 No right to use, flow and control of water

A lease granted after the commencement of this Ordinance does not give a right to the use, flow and control of water (including water containing impurities) under the land comprised in the lease.

56 Power of entry onto certain leased lands

- (1) If the Minister reasonably believes that a lessee has, or may have, contravened or is, or may be, contravening a term, condition or covenant of the lease, the Minister may enter upon and inspect the land contained in the lease and any improvements on it for the purpose of ascertaining compliance by the lessee.
- (2) Subsection (1) applies only if the Minister gives the lessee not less than 2 business days' notice before entering the land.
- (3) This section does not apply:
 - (a) in the case of a lease granted for diplomatic purposes—to that part of the premises under the lease being used for diplomatic purposes; or
 - (b) in the case of any other lease—to any part of the land being used only for residential purposes.

57 Leased land to be kept clean

Lessee must keep land clean and tidy

- (1) A lessee must at all times keep the land comprised in the lease clean, tidy and free from debris, rubbish and other unsightly or offensive matter.

Minister may give cleaning direction

- (2) If a lessee contravenes subsection (1), the Minister may, by notice in writing, direct the lessee to remove any matter or thing from the land and to restore the land to a clean and tidy condition.

EXPOSURE DRAFT

- (3) A direction must specify the period within which the removal and restoration must be carried out, which must be a period ending not less than 20 business days after the day the direction is given.

Contravention of cleaning direction

- (4) If a lessee contravenes a direction given to the lessee under subsection (2), the Minister may:
- (a) cause the work the subject of the direction to be carried out; and
 - (b) recover the costs of doing so, on demand, from the lessee.

58 Right to construct civil works and operate services

- (1) The Minister may authorise the entry, at any time, of persons onto any land contained in a lease for the purpose of carrying out construction works and maintenance on the land, in relation to:
- (a) civil infrastructure works such as stormwater drainage, sewerage services and street lighting; and
 - (b) the supply of electricity, gas, sewerage, water or other utilities.
- (2) In carrying out works and maintenance under subsection (1), an authorised person must minimise:
- (a) the inconvenience caused to the lessee and other occupants of the land; and
 - (b) the damage to the land caused by the works and maintenance.

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Part 3 Miscellaneous

Section 59

Part 3—Miscellaneous

59 Ministerial applications—supply of further information

Scope

- (1) This section applies in relation to an application made by a person (the ***applicant***) to the Minister under this Ordinance.

Request for further information

- (2) The Minister may, by written notice given to the applicant, request the applicant to give the Minister further information in relation to the application, within the period specified in the notice.
- (3) A period specified under subsection (2) must be reasonable, having regard to the circumstances.
- (4) The Minister may refuse to consider, or further consider, the application until the information is provided.
- (5) The application is taken to be withdrawn if the information is not provided within the specified period, or any longer period agreed to in writing by the Minister.

Withdrawal of application

- (6) The applicant may, by written notice given to the Minister, withdraw the application at any time before the Minister makes a decision on the application.

60 Administrative review of decisions by Minister

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a reviewable decision.
- (2) Each decision (within the meaning of the *Administrative Appeals Tribunal Act 1975*) of the Minister mentioned in column 1 of an item in the following table made under a provision mentioned in column 2 of the item is a ***reviewable decision***.

Reviewable decisions under this Ordinance		
Item	Column 1	Column 2
	A decision by the Minister to ...	made under ...
1	withdraw an offer of, or otherwise terminate a person's right to be granted, a lease	subsection 12(2)
2	refuse to extend the period in which the lessee may apply to the Minister to review a variation of rent	subsection 13(2)
3	confirm a variation of rent	paragraph 13(4)(a)
4	substitute a variation of rent	paragraph 13(4)(b)

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Miscellaneous **Part 3**

Section 60

Reviewable decisions under this Ordinance		
Item	Column 1	Column 2
	A decision by the Minister to ...	made under ...
5	approve an application for relief from lease conditions on terms different from those sought	paragraph 14(4)(b)
6	refuse an application for relief from lease conditions	paragraph 14(4)(c)
7	impose a condition on an approval for relief from lease conditions	subsection 14(6)
8	approve an application to vary a lease on terms different from those sought	paragraph 17(3)(b)
9	refuse an application to vary a lease	paragraph 17(3)(c)
10	determine an amount of lease variation charge	subsection 17(4)
11	refuse to remit or refund the whole or part of an amount of lease variation charge	subsection 22(1)
12	impose a condition on consent to a dealing in a Division 4 lease	paragraph 25(5)(b)
13	refuse to consent to a dealing in a Division 4 lease	paragraph 25(5)(c)
14	refuse to issue a full certificate of compliance in relation to a building and development provision	subsection 27(3)
15	refuse to issue a partial certificate of compliance in relation to a building and development provision	subsection 27(4)
16	impose a condition requiring security on a partial certificate of compliance	subsection 27(5)
17	refuse to issue a certificate of discharge of liability in relation to an instalment lease	subsection 27(8)
18	determine the market value of improvements on land at the assessment day	paragraph 37(3)(a)
19	refuse to extend the period for construction of a fence	subsection 39(4)
20	determine the cost of erecting a fence or the proportion of the cost payable by a lessee	paragraph 39(4)(b)
21	determine and apportion costs in relation to the erection of a party wall	subsection 40(7)
22	assess the value of a lease or the land comprised in a lease	subsection 43(1)
23	refuse to approve keeping 2 or more touring vehicles on residential land	paragraph 47(7)(b)
24	impose a condition on a surrender of a lease	subparagraph 48(2)(a)(ii)
25	refuse to accept a surrender of a lease or part of the land in a lease	paragraph 48(2)(b)
26	terminate a lease	subsection 50(1)
27	give a direction to remove a matter or thing from leased land	subsection 57(2)
28	refuse to extend the period for the provision of further information in relation to an application	subsection 59(5)

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Part 3 Miscellaneous

Section 61

61 Delegation

- (1) The Minister administering Part II of the Planning and Land Management Act may, by writing, delegate any or all of that Minister's functions, powers or duties under this Ordinance (other than the power to make rules under section 62) to:
 - (a) the NCA chief executive; or
 - (b) an SES employee, or acting SES employee, of the NCA; or
 - (c) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the NCA.
- (2) The Minister administering section 27 of the Planning and Land Management Act in so far as it relates to the declaration of land as National Land where the land is required for Commonwealth purposes other than for the special purposes of Canberra as the National Capital may, by writing, delegate any or all of that Minister's functions, powers or duties under this Ordinance (other than the power to make rules under section 62) to:
 - (a) the Secretary of the Department administered by that Minister; or
 - (b) an SES employee, or acting SES employee, in that Department; or
 - (c) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in that Department.

Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

62 Rule-making power

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Ordinance to be prescribed by rule; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.
- (2) Without limiting subsection (1), the rules may prescribe:
 - (a) fees payable in relation to the grant, variation, renewal or surrender of leases; and
 - (b) fees payable for the exercise of a power, or the performance of a function, by the Minister under this Ordinance.
- (3) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) directly amend the text of this Ordinance.

63 NCA chief executive may prescribe fees

- (1) Subject to subsection (2) of this section, the NCA chief executive may, by legislative instrument, prescribe in relation to those areas of National Land managed by the NCA under subsection 7(2):

- (a) fees payable in relation to the grant, variation, renewal or surrender of leases; and
 - (b) fees payable for the exercise of a power, or the performance of a function, by the Minister administering Part II of the Planning and Land Management Act under this Ordinance.
- (2) If a fee for a matter is prescribed by the rules:
- (a) the NCA chief executive must not prescribe a fee in relation to that matter; and
 - (b) any fee previously prescribed by the NCA chief executive for that matter ceases to have effect.

64 NCA chief executive may approve forms

- (1) The NCA chief executive may, by notifiable instrument, approve a form for the purposes of a provision of this Ordinance.
- (2) If a form is approved under subsection (1), the form must be used for any application, notice, submission, objection or other document given in relation to that provision.

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Part 4 Application, savings and transitional provisions

Section 65

Part 4—Application, savings and transitional provisions

65 Transitional—definitions

In this Part:

applied provisions, in relation to National Land, has the same meaning as in the old law.

City Area Leases Ordinance means the *City Area Leases Ordinance 1936*, as applied by the old law.

continuing lease means a lease granted or continued, or purported to have been granted or continued, under an applied provision that was in force, or purportedly in force, immediately before the transition time.

Leases Ordinance means the *Leases Ordinance 1918*, as applied by the old law.

Leases Regulations means the Leases Regulations, as applied by the old law.

Leases (Special Purposes) Ordinance means the *Leases (Special Purposes) Ordinance 1925*, as applied by the old law.

old law means the *National Land Ordinance 1989*, as in force immediately before the transition time.

Note: The *National Land Ordinance 1989* is repealed by this Ordinance: see Schedule 1.

transition time means the time this Ordinance commences.

66 Transitional—continuing leases

Continuing leases continue in force

- (1) Subject to this Ordinance, a continuing lease:
 - (a) continues in force after the transition time under this Ordinance subject to the terms, conditions and covenants applying, or purportedly applying, to the lease immediately before the transition time; and
 - (b) has effect, after the transition time, as if it had been granted under this Ordinance.

Continuing leases unaffected

- (2) Without limiting section 7 of the *Acts Interpretation Act 1901* in its application to this Ordinance, the repeal of the old law, and the commencement of this Ordinance, do not affect:
 - (a) the validity of a continuing lease; or
 - (b) any terms, conditions or covenants to which a continuing lease was subject immediately before the transition time.
- (3) In particular, and without limitation:

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- (a) leases granted before 1 January 1971 under the City Area Leases Ordinance that became nominal rent leases by the operation of sections 12 and 18 of that Ordinance continue in effect after the transition time as nominal rent leases; and
 - (b) the relief under subsection 29(3) of the City Area Leases Ordinance from restrictions imposed by covenant on the sale of certain leases granted on or after 1 January 1974 under that Ordinance continues in effect, as does the discharge of liability in relation to breach of such a covenant conferred by subsection 29(5) of that Ordinance.

Continuing operation of old law—mortgages and subleases

- (4) Despite the repeal of the old law:
 - (a) in relation to a mortgage granted under section 19 or 19AA of the City Area Leases Ordinance that was in force immediately before the transition time:
 - (i) the mortgage continues in effect after the transition time (until it is discharged); and
 - (ii) that section continues to apply in relation to the mortgage after the transition time; and
 - (b) in relation to a sublease granted before 1 January 1971 that was in effect immediately before the transition time:
 - (i) the conversion of references to ground rent in the sublease to references to rates by section 30A of the City Area Leases Ordinance continues to apply after the transition time; and
 - (ii) that section continues to apply in relation to the sublease after the transition time.

67 Transitional—applications made before transition time

Despite the repeal of the old law, the applied provisions continue to apply after the transition time to:

- (a) an application for the exercise of a power, or the performance of a function or duty that was:
 - (i) made under an applied provision before the transition time; and
 - (ii) undetermined immediately before the transition time; and
- (b) any review by a court or tribunal of a decision in relation to such an application.

68 Transitional—actions under applied provisions

A thing done before the transitional time for the purposes of any of the applied provisions is, on and after that time, taken to have been done for the purposes of the corresponding provision of this Ordinance, and this Ordinance applies in relation to that thing accordingly.

69 Transitional—delegations

- (1) This section applies to a delegation if:

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Part 4 Application, savings and transitional provisions

Section 70

- (a) the delegation was made for the purposes of a particular provision of the applied provisions; and
 - (b) the delegation was in force immediately before the transition time.
- (2) The delegation has effect, after the transition time, as if it had been made for the purposes of a corresponding provision of this Ordinance.

70 Transitional—use of land for industrial purposes

- (1) This section applies in relation to a continuing lease that:
 - (a) was granted under the City Area Leases Ordinance; and
 - (b) contains a provision for the land comprised in the lease to be used for a purpose set out in subsection 8A(1) of that Ordinance.
- (2) Despite the repeal of the old law, section 8A of the Ordinance continues to apply after the transition time to the land comprised in the continuing lease.

71 Transitional—rent review under continuing leases granted under the Leases Ordinance

- (1) This section applies in relation to a continuing lease that was granted under the Leases Ordinance subject to a condition or agreement that the rate at which the rent is to be payable for any period of the lease may be determined by the Minister or otherwise.
- (2) Section 13 (about variation of rent under a lease) of this Ordinance does not apply to the continuing lease.
- (3) Despite the repeal of the old law, the following applied provisions of the Leases Ordinance continue to apply after the transition time in relation to a variation of the rent under the lease:
 - (a) section 3AA (Minister may vary rent);
 - (b) section 3AAA (Appeals by lessees);
 - (c) section 3AAB (Fair rent);
 - (d) section 3AB (Reduction of rent and relief from conditions).

72 Transitional—dealings with, and termination of, continuing leases granted under Leases Ordinance

- (1) The following provisions of this Ordinance do not apply to a continuing lease granted under the Leases Ordinance:
 - (a) Division 4 of Part 2 (about restrictions on dealings with certain leases);
 - (b) subsections 50(1) and (2) (Minister's power to terminate lease) and section 51 (steps before giving termination notice).
- (2) Despite the repeal of the old law:
 - (a) regulations 19 and 20 of the Leases Regulations continue to apply to an assignment, sublease or parting with possession of the land comprised in the continuing lease, or part of that land, entered into or occurring after the transition time; and

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- (b) regulation 22 of the Leases Regulations continues to apply in relation to the determination of the continuing lease after the transition time.

73 Transitional—cost of erection of fences in relation to continuing leases granted under the Leases Ordinance

Subsection 39(4) (about the Minister erecting a fence and recovering the cost from the lessee) of this Ordinance does not apply in relation to a continuing lease granted under the Leases Ordinance.

74 Transitional—survey fees

- (1) This section applies in relation to a continuing lease granted under:
 - (a) the Leases Ordinance; or
 - (b) the Leases (Special Purposes) Ordinance.
- (2) Subsection 42(2) (obligation to pay survey fees) of this Ordinance does not apply in relation to a continuing lease to which this section applies.
- (3) Despite the repeal of the old law, the obligation to pay survey fees under the following applied provisions continues to apply after the transition time in relation to a continuing lease to which this section applies:
 - (a) section 3A of Leases Ordinance;
 - (b) section 5C of the Leases (Special Purposes) Ordinance.

75 Transitional—termination of continuing leases other than those granted under the Leases Ordinance

- (1) This section applies in relation to a continuing lease other than a continuing lease granted under the Leases Ordinance.
- (2) Despite subsection 50(1), the Minister may give a termination notice in relation to a contravention of a provision of the lease only if:
 - (a) the lease expressly provides that the Commonwealth is entitled to terminate the lease for a contravention of the provision; or
 - (b) in any other case—the Commonwealth would, as lessor, be entitled at common law to terminate the lease for the contravention of the provision.

EXPOSURE DRAFT

Schedule 1 Repeals

Schedule 1—Repeals

National Land Ordinance 1989

1 The whole of the Ordinance

Repeal the Ordinance.