



Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

TERRITORIES DIVISION

National Land Ordinances

Exposure Drafts – Leased and Unleased Land Ordinances

October 2021

Updated laws for the regulation of National Land

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) is preparing draft laws to replace the *National Land Ordinance 1989* (the NLO) which will sunset on 1 April 2022. The NLO enables the administration of National Land, for those areas of the Australian Capital Territory (ACT) still administered by the Commonwealth following the establishment of self-government in the ACT.

Two draft ordinances have been prepared with the aim of modernising the ‘pre-self-government laws’ given effect by the NLO, many of which date back to the last century, before the establishment of Canberra as the national capital. Where appropriate, these ordinances also align with ACT laws which apply to Territory Land, that is, the areas of the ACT, other than National Land, administered by the ACT Government.

Exposure drafts of the ordinances which will replace the NLO are now available for public comment:

- Australian Capital Territory National Land (Leased) Ordinance 2021 (the Leased Land Ordinance) which will administer leases upon National Land; and
- Australian Capital Territory National Land (Unleased) Ordinance 2021 (the Unleased Land Ordinance) which will deal with unleased National Land that is open to the public, such as parks and roads, and other unleased National Land in the ACT.

An exposure draft of the Australian Capital Territory National Land (Lakes) Ordinance 2021, which will administer lake areas on National Land, will be released for public comment at a later date.

Australian Capital Territory National Land (Leased) Ordinance 2021

The Leased Land Ordinance will provide for the administration of leases by the Commonwealth upon National Land. Presently, these leases consist of diplomatic leases, leases to government bodies and some commercial leases.

Consistent with the existing arrangements, 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.

Many of these leases are nominal rent leases. For those that are not, the Leased Land 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 their lease. The Leased Land 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). The Leased Land 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 Leased Land Ordinance determines how that amount is worked out.

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

The Leased Land 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 the Leased Land Ordinance. Many of those decisions may be the subject of review by the Administrative Appeals Tribunal and are listed in a table of reviewable decisions.

Transitional provisions will set out how the Leased Land Ordinance will apply to existing leases when the new arrangements commence. The terms and conditions of existing leases will be preserved under the new arrangements.

Australian Capital Territory National Land (Unleased) Ordinance 2021

The Unleased Land Ordinance provides for the management of National Land that is open to the public (such as parks and roads), as well as other National Land that has not been leased, and for the granting of licences.

Some provisions apply to all unleased National Land. Other provisions only apply to unleased National Land that is open to the public.

The Unleased Land Ordinance covers the making, alteration and closure (both temporary and permanent) of public roads on National Land. It also covers doing things necessary for the protection of unleased National Land, such as drainage work, damage repair and tree management.

The Unleased Land Ordinance provides a system for granting permits to use public unleased National Land for activities like functions and events, as well as for placing signs and other objects on or adjacent to public National Land. The permit provisions also apply to activities on islands in lake areas.

The Unleased Land Ordinance also sets out certain offences in relation to things happening on unleased National Land.

How can you have your say?

The Department invites your comments on these two exposure drafts by Sunday 7 November 2021. You can send comments in writing by:

Email: sunsettingACT@infrastructure.gov.au

Post: ACT Sunsetting Legislation Team
Territories Division
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594, CANBERRA ACT 2601

The Department intends to publish all comments on these exposure drafts, unless the comment is confidential or contains other information that is not suitable to publish. We will publish your name and any organisation you represent, but we will not publish any personal contact details such as your private email address or your residential address.

If you would like part or all of your comment, including your name, to remain confidential, please indicate this clearly in your correspondence. Automatically generated statements in an email are not sufficient. Confidential comments will be kept securely and will only be disclosed to third parties where authorised or required by law.

Privacy notice

The Department will use the personal information it collects in this consultation only for the purpose of the development of these ordinances, including where we may wish to communicate with you about your comment or about the draft legislation more generally.

Even if a comment is not marked confidential, we may not publish sensitive information or personal information, including information which may be used to identify a person other than the author of the submission or a group of people. This is in accordance with our obligations under the *Privacy Act 1988*.

The Department's privacy policy contains information about how to access and/or seek correction of personal information we hold and how complaints may be made. The Privacy Officer can be contacted by email at privacy@infrastructure.gov.au or on +61 2 6274 6495.