

# EXPOSURE DRAFT



EXPOSURE DRAFT

## **Australian Capital Territory National Land (National Memorials, Territory Divisions and Public Places) Ordinance 2022**

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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 2022

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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Preliminary **Part 1**

Section 1

## Part 1—Preliminary

### 1 Name

This Ordinance is the *Australian Capital Territory National Land (National Memorials, Territory Divisions and Public Places) Ordinance 2022*.

### 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. | 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Note: This table relates only to the provisions of this Ordinance as originally made.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Each instrument that is specified in a Schedule to this Ordinance is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Ordinance has effect according to its terms.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 sets out the process for determining the location or character (or both) of national memorials proposed to be located on National Land. The Minister may determine the location or character (or both) of a national memorial after the Canberra National Memorials Committee has considered a

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## Part 1 Preliminary

### Section 6

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proposal and made a recommendation. Any person or body can make a submission to the Minister or the Committee regarding the location or character (or both) of a national memorial.

This Ordinance provides for the Minister to determine:

- (a) the name of a division of the Territory, or a part of a division of the Territory, that is on National Land; and
- (b) the name of a public place, or that part of a public place, that is on National Land.

A person or body can object to a determination made by the Minister. The Committee must consider an objection and make a recommendation to the Minister, who must consider whether or not to amend or repeal the determination.

The Committee may refer other matters to the Minister for consideration.

This Ordinance continues in existence the Canberra National Memorials Committee and provides for the appointment of persons to the Committee. The Ordinance also sets out how meetings of the Committee are to be held and how the Committee can make decisions without meetings.

## 6 Definitions

In this Ordinance:

**Committee** means the Canberra National Memorials Committee continued in existence by section 16 of this Ordinance.

**division of the Territory** means a division, in relation to land, within the meaning of the *Districts Act 2002* (ACT) as in force at the commencement of this Ordinance.

**National Land** has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988*.

**national memorial** means a commemorative work or monument that recalls an event, a person or an achievement, of national significance.

**public place** includes the following:

- (a) an avenue, road, street or place which the public are entitled to use;
- (b) any unleased lands belonging to the Commonwealth.

**rules** means rules made under section 22.

**Secretary** means the Secretary of the Department.

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National memorials, divisions of the Territory, public places and other matters **Part 2**

Location and character of national memorials **Division 1**

Section 7

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## **Part 2—National memorials, divisions of the Territory, public places and other matters**

### **Division 1—Location and character of national memorials**

#### **7 Application of this Division**

This Division applies in relation to a national memorial proposed to be located on National Land.

#### **8 Minister to determine location or character of national memorial**

- (1) The Minister may, by notifiable instrument, determine the location or character (or both) of a national memorial.
- (2) Before making a determination under subsection (1), the Minister must consider any recommendation of the Committee in relation to the national memorial under section 9.
- (3) The Minister may, by notifiable instrument, amend or repeal a determination made under subsection (1).

#### **9 Proposals regarding location or character of national memorial**

- (1) The Minister may give the Committee a proposal regarding the location or character (or both) of a national memorial.  

Note: The proposal may be included in a report given to the Committee under subsection 10(4).
- (2) The proposal may:
  - (a) relate to a submission made or referred to the Minister under section 10; or
  - (b) be made on the Minister's own initiative.
- (3) The Committee must, within 3 months after receiving the proposal from the Minister, consider the proposal and recommend that the Minister:
  - (a) determine the location or character (or both) of the national memorial in accordance with the proposal, subject to such alterations (if any) recommended by the Committee; or
  - (b) not determine the location or character (or both) in accordance with the proposal; or
  - (c) reconsider the proposal.
- (4) The Minister must, within 3 months after receiving the recommendation of the Committee:
  - (a) consider the recommendation; and
  - (b) if the Committee made a recommendation under paragraph (3)(c)—reconsider the proposal; and

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**Part 2** National memorials, divisions of the Territory, public places and other matters

**Division 1** Location and character of national memorials

## Section 10

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- (c) notify the Committee of whether the Minister will take action in relation to the proposal and what the action will be.

Note: The Minister may submit a revised proposal to the Committee under subsection (1).

### **10 Submissions regarding location or character of national memorial**

- (1) A person or body may make a submission to the Committee or the Minister regarding the location or character (or both) of a national memorial.
- (2) If the submission is made to the Committee, the Committee must refer the submission to the Minister within 28 days after receiving it.
- (3) The Committee may, on its own initiative, make a submission to the Minister regarding the location or character (or both) of a national memorial.
- (4) The Minister must, within 3 months after receiving the submission made or referred to the Minister under this section:
  - (a) consider the submission; and
  - (b) if the submission was made or referred by the Committee—prepare a report on the submission and give the report to the Committee.



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National memorials, divisions of the Territory, public places and other matters **Part 2**  
Naming of divisions of the Territory **Division 2**

Section 11

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## **Division 2—Naming of divisions of the Territory**

### **11 Minister to determine name of division of the Territory**

- (1) The Minister may, by notifiable instrument, determine the name of a division of the Territory, or that part of a division of the Territory, that is on National Land.
- (2) In determining the name of the division of the Territory or the part of the division of the Territory, the Minister must have regard to the names of persons who have made notable contributions to the existence or advancement of Australia as a nation.
- (3) The Minister may, by notifiable instrument, amend or repeal a determination made under subsection (1).

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**Part 2** National memorials, divisions of the Territory, public places and other matters

**Division 3** Naming of public places

Section 12

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## **Division 3—Naming of public places**

### **12 Minister to determine name of public place**

- (1) The Minister may, by notifiable instrument, determine the name of a public place, or that part of a public place, that is on National Land.
- (2) In determining the name of the public place or the part of the public place, the Minister must have regard to the following:
  - (a) the names of persons who have made notable contributions to the existence or advancement of Australia as a nation;
  - (b) the names of Australian flora and fauna and things characteristic of Australia or Australians;
  - (c) the words of Aboriginal and Torres Strait Islander languages.

Note: Paragraph (a) includes persons famous in Australia in fields such as education, science, Indigenous affairs, politics and exploration.

- (3) Before having regard to the words of Aboriginal and Torres Strait Islander languages under paragraph (2)(c), the Minister must take reasonable steps to consult an appropriate cultural group.
- (4) The Minister may, by notifiable instrument, amend or repeal a determination made under subsection (1).

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## Division 4—Objections to determinations

### 13 Objections to determinations

- (1) A person or body may, in writing, object to a determination made by the Minister under any of the following:
  - (a) section 8 (location or character (or both) of a national memorial);
  - (b) section 11 (name of a division of the Territory);
  - (c) section 12 (name of a public place).
- (2) The objection must be lodged with the Minister within 21 days after the determination commences.

Note: See subsection 12(1) of the *Legislation Act 2003* for the commencement of notifiable instruments.
- (3) If an objection is made in accordance with this section, the Minister must refer the objection to the Committee within 28 days after the Minister receives the objection.

### 14 Consideration of objection

- (1) The Committee must, within 3 months after receiving the objection referred by the Minister, consider the objection and recommend that the Minister:
  - (a) repeal the determination; or
  - (b) amend the determination as set out in the recommendation; or
  - (c) neither amend nor repeal the determination.
- (2) The Minister must, within 3 months after receiving the recommendation of the Committee:
  - (a) consider the recommendation; and
  - (b) notify the Committee, and the person or body that made the objection, of whether the Minister will take action in relation to the determination and what the action will be.

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**Part 2** National memorials, divisions of the Territory, public places and other matters

**Division 5** Other matters

Section 15

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## **Division 5—Other matters**

### **15 Consideration of other matters**

- (1) The Committee may refer matters not otherwise mentioned in this Part to the Minister for consideration.
- (2) The Minister must:
  - (a) consider the matter; and
  - (b) prepare a report on the matter and give the report to the Committee.

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Canberra National Memorials Committee **Part 3**  
Continuation of Canberra National Memorials Committee **Division 1**

Section 16

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## **Part 3—Canberra National Memorials Committee**

### **Division 1—Continuation of Canberra National Memorials Committee**

#### **16 Continuation of Canberra National Memorials Committee**

The Canberra National Memorials Committee established by the *National Memorials Ordinance 1928* is continued in existence.

Note: The *National Memorials Ordinance 1928* was repealed when this Ordinance commenced.

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Part 3 Canberra National Memorials Committee

Division 2 Membership of Committee

Section 17

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## Division 2—Membership of Committee

### 17 Membership of Committee

#### *Members of the Committee*

- (1) The Committee consists of the following members:
  - (a) the Prime Minister;
  - (b) the Minister;
  - (c) the Leader of the Government in the Senate;
  - (d) the Leader of the Opposition in the Senate;
  - (e) the Leader of the Opposition in the House of Representatives;
  - (f) the Secretary;
  - (g) one person appointed to the Committee under section 18;
  - (h) no more than 2 persons appointed to the Committee under section 19.
- (2) The Prime Minister is the Chair of the Committee.

#### *Acting appointments to the Committee*

- (3) The Governor-General may, by written instrument, appoint a person to act as a member of the Committee:
  - (a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the member:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

#### *Minister may authorise others to perform functions, etc as Committee member*

- (4) To avoid doubt, section 34AAB of the *Acts Interpretation Act 1901* applies in relation to the performance or exercise of the Minister's functions, duties or powers as a member of the Committee.

### 18 Appointment of person by Minister

- (1) The Minister must, by written instrument, appoint one of the following to be a member of the Committee:
  - (a) an SES employee, or an acting SES employee;
  - (b) a person who holds, or is acting in, a position that is equivalent to, or higher than, a position occupied by an SES employee;
  - (c) a person who the Minister is satisfied has expertise relevant to the functions of the Committee.

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

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- (2) The person appointed may be:
  - (a) a named person; or
  - (b) any person from time to time holding, occupying or performing the duties of, a specified position or office.
- (3) A person appointed under this section holds office as a member of the Committee:
  - (a) on a part-time basis; and
  - (b) for the period specified in the instrument of appointment, which must not exceed 3 years; and
  - (c) on the terms and conditions (if any) in relation to matters not covered by this Ordinance that are determined by the Minister.

Note: The person may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

## 19 Appointment of Territory residents by Governor-General

- (1) The Governor-General may, by written instrument, appoint a person to be a member of the Committee if the person ordinarily resides in the Territory.
- (2) A person appointed under this section holds office as a member of the Committee:
  - (a) on a part-time basis; and
  - (b) for the period specified in the instrument of appointment, which must not exceed 3 years; and
  - (c) on the terms and conditions (if any) in relation to matters not covered by this Ordinance that are determined by the Governor-General.

Note: The person may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (3) A person appointed under this section is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.
- (4) A person appointed under this section is to be paid the allowances that are prescribed by the rules.
- (5) Subsections (3) and (4) have effect subject to the *Remuneration Tribunal Act 1973*.
- (6) If a person who is appointed to the Committee under this section ceases to ordinarily reside in the Territory from a time:
  - (a) the person ceases to be a member of the Committee at that time; and
  - (b) the Governor-General must repeal the instrument appointing the person to be such a member.

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Part 3 Canberra National Memorials Committee

Division 3 Operation of Committee

Section 20

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## Division 3—Operation of Committee

### 20 Meetings of the Committee

#### *Holding meetings*

- (1) The Committee:
  - (a) must hold such meetings as are necessary for the efficient performance of its functions under this Ordinance; and
  - (b) may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which members of the Committee may participate in meetings.

- (2) A meeting of the Committee may be convened by the Minister or the Secretary.

#### *Presiding at meetings*

- (3) The Chair of the Committee must preside at all meetings at which the Chair is present.
- (4) If the Chair of the Committee is not present at a meeting, the other members of the Committee present must appoint one of themselves to preside.

#### *Quorum*

- (5) At a meeting of the Committee, a quorum is constituted by 3 members of the Committee.

#### *Voting at meetings*

- (6) A question arising at a meeting of the Committee is to be determined by a majority of the votes of the members of the Committee present and voting.
- (7) The person presiding at a meeting of the Committee has a deliberative vote and, if the votes are equal, a casting vote.

#### *Minutes*

- (8) The Committee must keep minutes of its meetings.

### 21 Decisions without meetings

- (1) The Committee is taken to have made a decision at a meeting if:
  - (a) without meeting, a majority of the members of the Committee entitled to vote on the proposed decision indicate agreement with the decision; and
  - (b) that agreement is indicated in accordance with the method determined by the Committee under subsection (2); and



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## Section 21

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- (c) all the members of the Committee were informed of the proposed decision, or reasonable efforts were made to inform all the members of the Committee of the proposed decision.
- (2) Subsection (1) applies only if the Committee:
  - (a) has determined that it may make decisions of that kind without meeting; and
  - (b) has determined the method by which members of the Committee are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member of the Committee is not entitled to vote on a proposed decision if the member of the Committee would not have been entitled to vote on that proposal had the matter been considered at a meeting of the Committee.
- (4) The Committee must keep a record of decisions made in accordance with this section.

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## Part 4 Miscellaneous

### Section 22

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## Part 4—Miscellaneous

### 22 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Ordinance to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.
- (2) 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.

## Part 5—Application, saving and transitional provisions

### 23 Transitional—definitions

In this Part:

*old law* means the *National Memorials Ordinance 1928* as in force immediately before the transition time.

*transition time* means the time this Ordinance commences.

### 24 Things done under the old law

- (1) Subject to this Part, if:
  - (a) a thing was done for a particular purpose under the old law; and
  - (b) the thing could be done for that purpose under this Ordinance;the thing has effect for the purposes of this Ordinance as if it had been done for that purpose under this Ordinance.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a determination or appointment being made.
- (3) Despite the repeal of the old law, the old law continues to apply after the transition time to:
  - (a) a process started under the old law in relation to a national memorial, a division of the Territory or a public place, that was not completed before the transition time; and
  - (b) a determination of the Committee, under subsection 8B(2) of the old law, that was in force immediately before the transition time.
- (4) Without limiting paragraph (3)(a), a reference in that paragraph to a process includes a reference to the referral or consideration of a communication, representation, recommendation, proposal or objection.

### 25 Application—appointments

Subsections 18(3) and 19(2) to (5) of this Ordinance apply in relation to an appointment made after the transition time.

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**Part 5** Application, saving and transitional provisions

Section 25

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## **Schedule 1—Repeals**

### *National Memorials Ordinance 1928*

#### **1 The whole of the Ordinance**

Repeal the Ordinance.