

EXPOSURE DRAFT



EXPOSURE DRAFT

Australian Capital Territory National Land (Unleased) 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

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Simplified outline of this Ordinance	1
5 Definitions	2
6 Application and administration of Ordinance	4
7 Interaction with Territory Acts.....	5
8 Administrative arrangements with Territory	5
Part 2—Public roads	6
Division 1—What is a public road?	6
9 Meaning of <i>public road</i>	6
Division 2—Creation and alteration of public roads	7
10 Unleased National Land may be declared as public road.....	7
11 Fixing or changing level of public road	7
12 Identification of public road boundaries	8
13 Retrospective amendment of notifiable instruments under this Part	8
14 No liability in relation to alignment of public road	8
Division 3—Temporary measures relating to public roads	9
15 Temporary closing of public roads.....	9
16 Approval to use temporarily closed public road.....	9
17 Use of temporarily closed public road without approval.....	9
18 Minister may make temporary public road	9
Division 4—Permanent closure of public roads	11
19 Notice of intention to permanently close public road.....	11
20 Permanent closure of public road.....	11
Division 5—No rights-of-way by user	12
21 No right-of-way by user against Commonwealth etc.	12
Part 3—Protection and management of unleased National Land	13
Division 1—Direction to carry out drainage works	13
22 Direction to construct surface water drain	13
23 Contravention of a drainage direction	13
24 Repair of damage and construction of drains by Minister.....	13
Division 2—Damage to public National Land	15
25 Direction to repair damage to public National Land	15
26 Contravention of repair damage direction.....	15
27 Interference with or damage to Commonwealth property.....	15
28 Commonwealth may repair damage.....	16
Division 3—Signs on or adjacent to public National Land	17
29 Placing of signs on or adjacent to public National Land	17
Division 4—Trees and other plants affecting public National Land	18
30 Direction to prune tree etc. overhanging public National Land	18
31 Contravention of plant pruning direction	18
32 Pruning of tree etc. by Commonwealth.....	18
33 Direction to remove tree etc. endangering public safety on public National Land.....	18
34 Contravention of plant removal direction	19

EXPOSURE DRAFT

35	Removal of tree etc. by Commonwealth	19
Division 5—Removal and disposal of objects on unleased National Land		20
36	Object removal directions—unleased National Land.....	20
37	Object removal directions—exceptions	20
38	Removal of objects by the Commonwealth	21
39	Disposal of objects by the Commonwealth	22
40	Retention area	22
Division 6—Temporary closing of public National Land to traffic		23
41	Minister may temporarily close public National Land to traffic	23
Division 7—Emergency management		24
42	Emergency closure of permitted place	24
43	Contravention of emergency closure order	24
Part 4—Use of public National Land		25
Division 1—General		25
44	Use of public National Land—regulated activities	25
45	Use of public National Land for regulated activity without permit etc.	25
46	Contravention of condition of permit to use public National Land	25
Division 2—Permits to use public National Land for regulated activities		27
47	Application for permit to use public National Land for regulated activities	27
48	Request for further information	28
49	Withdrawal of application.....	28
50	Decision on application for permit.....	28
51	Form and contents of permit	29
52	Application for renewal of permit.....	29
53	Replacement of lost, stolen or destroyed permit	31
54	Failure of permit holder to notify change of name or address	31
55	Rights of permit holder in relation to objects.....	31
56	Surrender of permit	31
57	Cancellation of permit.....	31
Division 3—Licences of unleased National Land		33
58	Licences of unleased National Land	33
59	Use of land for licensed purpose	33
60	Minister’s power to terminate licence	33
61	Steps before giving termination notice.....	34
62	Recovery of lands by Commonwealth	34
63	Evidence of ending of licence	34
Part 5—Other activities on unleased National Land		35
64	Damage to fences, signs or markers	35
65	Leaving gates open	35
66	Damaging trees etc.....	35
67	Earth etc. not to be taken without permit	36
68	No unauthorised camping on unleased National Land	36
Part 6—Miscellaneous		37
69	Police powers	37
70	Administrative review of Minister’s decisions.....	37
71	Delegation	38
72	Rule-making power.....	39
73	NCA chief executive may prescribe fees	39
74	NCA chief executive may approve forms	39

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 7—Application, savings and transitional provisions	40
75 Transitional—definitions	40
76 Transitional—applications made before transition time	40
77 Transitional—actions under applied provisions	40
78 Transitional—old permits	41
79 Transitional—instruments other than old permits	41
80 Transitional—delegations	41
81 Transitional—continuing licences of unleased National Land.....	41

Part 1—Preliminary

1 Name

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

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

The 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.

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

The 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 Ordinance provides for the grant of licences to occupy or use unleased National Land.

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

5 Definitions

In this Ordinance:

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

drainage direction: see section 22.

emergency closure order: see section 42.

lake area has the same meaning as in the *Australian Capital Territory National Land (Lakes) Ordinance 2021*.

lessee, in relation to land, means a lessee of the land from the Commonwealth.

Note: The land could be either National Land or Territory Land.

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

Note: This Ordinance applies to licences of National Land in force immediately before the commencement of this Ordinance: see section 81.

licensee means a person to whom a licence has been granted.

management, in relation to land, includes care, control and maintenance.

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.

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

NCA chief executive means the Chief Executive of the NCA.

object includes any substance, material or thing.

object removal direction: see section 36.

occupier, in relation to land, includes:

- (a) a person reasonably believed to be an occupier of the land; and
- (b) a person apparently in charge of the land.

permit means a permit under Division 2 of Part 4 to use public National Land for a regulated activity.

permitted place, in relation to a permit, means the land covered by the permit, or a part of that land.

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

plant pruning direction: see section 30.

plant removal direction: see section 33.

prescribed fee means a fee prescribed by:

- (a) the rules; or
- (b) the NCA chief executive under section 73.

public National Land means unleased National Land that:

- (a) the public is entitled to use; or
- (b) is open to, or used by, the public.

public road: see section 9.

regulated activity: see section 44.

repair damage direction: see section 25.

retrieval notice: see section 38.

reviewable decision: see section 70.

road related area: see section 37.

rules means rules made under section 72.

sign includes an advertisement or public notice.

EXPOSURE DRAFT

Part 1 Preliminary

Section 6

Signs General Code means the code of that name, forming part of the National Capital Plan, that relates to the placement of signs in Designated Areas.

termination notice, in relation to a licence: see section 60.

Territory Act: see section 7.

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

unlawful occupier, in relation to unleased National Land: see section 62.

unleased National Land means National Land that is not subject to a lease granted under the *Australian Capital Territory National Land (Leased) Ordinance 2021*.

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

6 Application and administration of Ordinance

Ordinance applies to National Land

- (1) Subject to subsection (2), this Ordinance applies to National Land that is not a lake area.
- (2) In addition to its application under subsection (1), the following provisions of this Ordinance apply to National Land that is a lake area comprising an island in, or foreshore of, a lake:
 - (a) Divisions 1 and 2 of Part 4 (about permits for regulated activities on public National Land);
 - (b) Division 3 of Part 4 (about licences of unleased National Land).

Management of National Land

- (3) 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.
- (4) 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

- (5) 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

- (6) 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.

7 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) a lessee of Territory Land could be given a drainage direction under section 22 in relation to surface water flowing into public National Land; or
 - (b) an occupier of Territory Land could be given a plant pruning direction under s 30 in relation to a tree overhanging public National Land.
- (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*.

8 Administrative arrangements with Territory

- (1) The Minister may, on behalf of the Commonwealth, enter into arrangements with the Territory with respect to the administration of this Ordinance.
- (2) Without limiting subsection (1), an arrangement may provide for the exercise of powers or the performance of functions or duties by the Territory (or its authorities, officers or employees) on behalf of the Commonwealth.

EXPOSURE DRAFT

Part 2 Public roads

Division 1 What is a public road?

Section 9

Part 2—Public roads

Division 1—What is a public road?

9 Meaning of *public road*

(1) A *public road* is any street, road, lane or thoroughfare that is:

- (a) on National Land; and
- (b) open to, or used by, the public.

Note: For the dedication of unleased National Land as a public road, see section 10.

(2) A road does not stop being a *public road* only because it is temporarily closed under Division 3.

(3) However, an area is not a *public road* if:

- (a) the area is declared by the rules not to be a public road; or
- (b) the area is a permanently closed road, or a permanently closed part of a road, declared under section 20.

Division 2—Creation and alteration of public roads

10 Unleased National Land may be declared as public road

- (1) The Minister may, by notifiable instrument, declare any area of unleased National Land to be a public road.
- (2) On the making of a declaration under subsection (1), the area is dedicated as a public road and is open to, and may be used by, the public accordingly.

Note: National Land in relation to which a lease has been granted under the *Australian Capital Territory National Land (Leased) Ordinance 2021* may be subject to acquisition for the public purpose of a road under the *Lands Acquisition Act 1989*. After acquisition, such land could be declared to be a public road under this section.

11 Fixing or changing level of public road

Proposals to fix or change levels of public roads

- (1) The Minister may prepare a proposal to fix or change the level of a public road.
- (2) The Minister must:
 - (a) publish a notice about the proposal to fix or change the level on the NCA's website; and
 - (b) give anyone interested in the proposal an opportunity to make a submission about the proposal.
- (3) The notice must:
 - (a) state the name and location of the public road; and
 - (b) specify where plans of the proposal may be inspected; and
 - (c) invite anyone interested in the proposal to make a written submission about it within a period specified in the notice.
- (4) The period specified in the notice for making a submission must be at least 20 business days after the day the notice is published.

Minister's decision on proposal

- (5) In deciding whether to fix or change the level of the public road, the Minister must consider any submissions made in accordance with the notice.
 - (6) The Minister may decide to:
 - (a) fix or change the level of the public road (with or without alteration to the proposal); or
 - (b) abandon the proposal.
 - (7) If the Minister decides to proceed with the proposal (with or without alteration), the Minister may, by notifiable instrument, fix or change the level of the public road.
 - (8) The Minister must publish a copy of the instrument under subsection (7) on the NCA's website.
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EXPOSURE DRAFT

Part 2 Public roads

Division 2 Creation and alteration of public roads

Section 12

Restoration of access to adjoining land

- (9) If the fixing or changing of the level of a public road results in loss of access across the boundary between the road and a lessee's land adjoining the road, the Minister must cause access to be restored between the road and that land.

12 Identification of public road boundaries

- (1) The Minister may cause a survey to be carried out to identify the boundaries of a public road if:
- (a) the boundaries have not been previously identified; or
 - (b) the survey marks used to identify the boundaries cannot be located or ascertained.
- (2) After completion of the survey, the Minister must:
- (a) publish notice of the proposed boundaries on the NCA's website; and
 - (b) give a copy of the notice to each lessee of land that is adjacent to the public road.
- (3) The notice must:
- (a) include a survey plan that shows the proposed boundaries of the public road; and
 - (b) specify where a copy of the plan may be inspected; and
 - (c) invite anyone interested in the proposal to make a written submission about it within a period specified in the notice.
- (4) The period specified in the notice for making a submission must be at least 20 business days after the day the notice is published.
- (5) After considering any submissions made in accordance with the notice, the Minister may, by notifiable instrument:
- (a) approve the plan (with or without alteration to the proposal); or
 - (b) abandon the proposal.
- (6) The Minister must publish a copy of the instrument under subsection (5) on the NCA's website.

13 Retrospective amendment of notifiable instruments under this Part

If a notifiable instrument (the *original instrument*) made under this Part is amended by another notifiable instrument, the amending instrument is taken to have commenced immediately after the commencement of the original instrument, unless the amending instrument provides otherwise.

14 No liability in relation to alignment of public road

Neither the Commonwealth nor the Territory is liable for any loss or damage suffered by a person because of any alignment or alteration of alignment of a public road under this Ordinance.

Division 3—Temporary measures relating to public roads

15 Temporary closing of public roads

- (1) The Minister may temporarily close a public road to vehicular or other traffic.
- (2) Before temporarily closing a public road, the Minister must, at least 5 business days before the road is to be closed:
 - (a) publish a notice about the proposal to close the road on the NCA’s website; and
 - (b) display a copy of the notice of the closure of the road in a conspicuous place at the road.
- (3) Subsection (2) does not apply in urgent circumstances.

16 Approval to use temporarily closed public road

- (1) A person may apply to the Minister for approval to use a public road that has been temporarily closed under section 15.
- (2) The application must be accompanied by the prescribed fee (if any).
- (3) The Minister must consider the application and must:
 - (a) approve the use of the public road; or
 - (b) refuse to approve the use of the public road.
- (4) The Minister may give an approval only if reasonably satisfied that use of the public road in accordance with the approval would not be likely to cause unacceptable risk to people or property, or damage to the road.
- (5) An approval may be given subject to any condition that the Minister reasonably believes is necessary for the management of traffic or the protection of people, property or the public road.

17 Use of temporarily closed public road without approval

A person commits an offence of strict liability if the person:

- (a) uses a public road that has been temporarily closed under section 15; and
- (b) does not hold an approval given under section 16 to use the road.

Penalty: 10 penalty units.

18 Minister may make temporary public road

- (1) This section applies if the Minister:
 - (a) temporarily closes a public road under section 15; and
 - (b) considers that it is necessary to make a temporary road for public use while the public road is closed.
- (2) The Minister may make a temporary public road over National Land.

EXPOSURE DRAFT

Part 2 Public roads

Division 3 Temporary measures relating to public roads

Section 18

- (3) At least 24 hours before making the temporary public road, the Minister must give written notice to any occupier or lessee of:
 - (a) the land on which the road is to be made; or
 - (b) land adjacent to that land.
- (4) Subsection (3) does not apply in urgent circumstances.
- (5) The Commonwealth is liable for any damage caused in making the temporary public road, other than any minor damage that is incidental to the making of the temporary road.

Division 4—Permanent closure of public roads

19 Notice of intention to permanently close public road

- (1) The Minister may, by notifiable instrument, give notice of a proposal to permanently close a public road, completely or partly.
- (2) The Minister must, within 5 business days after registration of the notice on the Federal Register of Legislation:
 - (a) give a copy of the notice to each lessee or occupier of land with frontage to the public road or part whose name and address is known; and
 - (b) publish a copy of the notice on the NCA's website; and
 - (c) display a copy of the notice in a conspicuous place at the road.
- (3) The notice must state that objections to the permanent closure of the public road are to be given to the Minister within a period specified in the notice.
- (4) The period specified in the notice for making a submission must be at least 20 business days after the day the notice is registered.

20 Permanent closure of public road

- (1) After considering any objections made in accordance with the notice given under section 19, the Minister may, by notifiable instrument, declare that the public road is permanently closed, completely or partly.
- (2) On the making of a declaration permanently closing a public road, the National Land included in the closed road, or closed part of the road, is no longer open to the public or any particular person for use as a road.
- (3) The Minister must publish a copy of the instrument under subsection (1) on the NCA's website.

EXPOSURE DRAFT

Part 2 Public roads

Division 5 No rights-of-way by user

Section 21

Division 5—No rights-of-way by user

21 No right-of-way by user against Commonwealth etc.

A right-of-way cannot be created only by continuous use against:

- (a) the Commonwealth; or
- (b) a person holding National Land for a public purpose.

EXPOSURE DRAFT

Protection and management of unleased National Land **Part 3**

Direction to carry out drainage works **Division 1**

Section 22

Part 3—Protection and management of unleased National Land

Division 1—Direction to carry out drainage works

22 Direction to construct surface water drain

- (1) This section applies if surface water from land:
 - (a) overflows into public National Land; and
 - (b) damages the public National Land.
- (2) The Minister may, by written notice (a *drainage direction*) given to a lessee of land from which water has overflowed, direct the lessee to do either or both of the following:
 - (a) repair the damage;
 - (b) construct specified drains.
- (3) A drainage direction that requires the repair of damage to public National Land must specify:
 - (a) the public National Land to which it relates; and
 - (b) the damage to be repaired.
- (4) A drainage direction that requires the construction of specified drains must specify:
 - (a) the location and size of the drains; and
 - (b) that the lessee must maintain the drains in good condition.
- (5) A drainage direction must specify the period within which the work set out in the direction must be carried out, which must be not less than 20 business days after the day the direction is given.

23 Contravention of a drainage direction

A person commits an offence of strict liability if the person:

- (a) is subject to a drainage direction; and
- (b) contravenes the direction.

Penalty: 5 penalty units.

24 Repair of damage and construction of drains by Minister

- (1) This section applies if a lessee of land:
 - (a) is subject to a drainage direction; and
 - (b) contravenes the direction.
- (2) If damage to public National Land has not been repaired as directed, the Minister may:
 - (a) cause the damage to be repaired; and

EXPOSURE DRAFT

Part 3 Protection and management of unleased National Land

Division 1 Direction to carry out drainage works

Section 24

- (b) recover the reasonable costs of repairing the damage from the lessee.
- (3) If a drain has not been constructed or maintained as directed, the Minister may:
 - (a) authorise persons to enter onto the lessee's land to construct or maintain the drains specified in the drainage direction; and
 - (b) recover the reasonable costs of the construction or maintenance from the lessee.

EXPOSURE DRAFT

Protection and management of unleased National Land **Part 3**

Damage to public National Land **Division 2**

Section 25

Division 2—Damage to public National Land

25 Direction to repair damage to public National Land

- (1) This section applies if:
- (a) a person causes damage to public National Land or Commonwealth property on public National Land; and
 - (b) the damage is not authorised under:
 - (i) a permit; or
 - (ii) a licence; or
 - (iii) a works approval.
- Example: Commonwealth property on public National Land might include the following:
- (a) a street light;
 - (b) electrical power infrastructure;
 - (c) a road barrier;
 - (d) a bridge;
 - (e) a footpath;
 - (f) a kerb;
 - (g) a tree, shrub or other vegetation (living or not);
 - (h) a monument or artefact;
 - (i) a park bench, table or barbeque.
- (2) The Minister may, by written notice (a *repair damage direction*) given to the person, direct the person to repair the damage.
- (3) A repair damage direction must specify:
- (a) the public National Land and any Commonwealth property to which it relates; and
 - (b) the damage to be repaired; and
 - (c) the period, starting after the day the direction is given, within which the work specified in the direction must be carried out, which must be:
 - (i) not less than 20 business days; or
 - (ii) in the case of urgent repairs—a shorter period specified in the direction.

26 Contravention of repair damage direction

A person commits an offence of strict liability if the person:

- (a) is subject to a repair damage direction; and
- (b) contravenes the direction.

Penalty: 20 penalty units.

27 Interference with or damage to Commonwealth property

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct is not authorised under:

EXPOSURE DRAFT

Part 3 Protection and management of unleased National Land

Division 2 Damage to public National Land

Section 28

- (i) a permit; or
- (ii) a licence; or
- (iii) a works approval; and
- (c) the conduct results in damage to, or interference with, Commonwealth property on public National Land.

Penalty: 20 penalty units.

- (2) Strict liability applies to paragraph (1)(c).

28 Commonwealth may repair damage

- (1) This section applies if a person:
 - (a) causes damage to public National Land or Commonwealth property on public National Land; or
 - (b) is subject to a repair damage direction and contravenes the direction.
- (2) The Minister may:
 - (a) cause the damage to be repaired; and
 - (b) recover the reasonable costs of repairing the damage from the person.

EXPOSURE DRAFT

Protection and management of unleased National Land **Part 3**
Signs on or adjacent to public National Land **Division 3**

Section 29

Division 3—Signs on or adjacent to public National Land

29 Placing of signs on or adjacent to public National Land

A person commits an offence of strict liability if the person:

- (a) places a sign:
 - (i) on or adjacent to public National Land; or
 - (ii) on Commonwealth property on or adjacent to public National Land;
and
- (b) none of the following apply in relation to the placement of the sign:
 - (i) it is authorised by a permit;
 - (ii) it is authorised by a licence;
 - (iii) it is authorised by a works approval;
 - (iv) it is permitted under the Signs General Code and none of the authorisations mentioned in subparagraphs (i) to (iii) have been granted or are required.

Penalty: 10 penalty units.

EXPOSURE DRAFT

Part 3 Protection and management of unleased National Land

Division 4 Trees and other plants affecting public National Land

Section 30

Division 4—Trees and other plants affecting public National Land

30 Direction to prune tree etc. overhanging public National Land

- (1) This section applies if the Minister reasonably believes that a tree or other plant:
 - (a) is overhanging public National Land; and
 - (b) is likely to obstruct or inconvenience anyone on the public National Land.
- (2) The Minister may, by written notice (a *plant pruning direction*) given to an occupier of the land on which the tree or other plant is growing, direct the person to prune the tree or other plant.
- (3) A plant pruning direction must specify:
 - (a) the public National Land to which it relates; and
 - (b) the tree or other plant to be pruned; and
 - (c) how the tree or plant must be pruned; and
 - (d) the period, starting after the day the direction is given, within which the pruning must be carried out, which must be:
 - (i) not less than 5 business days; or
 - (ii) in an urgent case—a shorter period specified in the direction.

31 Contravention of plant pruning direction

A person commits an offence of strict liability if the person:

- (a) is subject to a plant pruning direction; and
- (b) contravenes the direction.

Penalty: 5 penalty units.

32 Pruning of tree etc. by Commonwealth

- (1) This section applies if an occupier of land is subject to a plant pruning direction and contravenes the direction.
- (2) The Minister may:
 - (a) authorise persons to enter onto the land on which the tree or other plant is growing to prune the tree or other plant; and
 - (b) recover the reasonable costs of the pruning from the occupier of the land.

33 Direction to remove tree etc. endangering public safety on public National Land

- (1) This section applies if the Minister reasonably believes that a tree or other plant endangers the safety of anyone on public National Land.
- (2) The Minister may, by written notice (a *plant removal direction*) given to an occupier of the land on which the tree or other plant is growing, direct the person to remove the tree or plant.

EXPOSURE DRAFT

Protection and management of unleased National Land **Part 3**
Trees and other plants affecting public National Land **Division 4**

Section 34

- (3) The plant removal direction must specify:
- (a) the public National Land to which it relates; and
 - (b) the tree or other plant causing the danger; and
 - (c) the period, starting after the day the direction is given, within which the removal must be carried out, which must be:
 - (i) not less than 3 business days; or
 - (ii) in an urgent case—a shorter period specified in the direction.

34 Contravention of plant removal direction

A person commits an offence of strict liability if the person:

- (a) is subject to a plant removal direction; and
- (b) contravenes the direction.

Penalty: 30 penalty units.

35 Removal of tree etc. by Commonwealth

- (1) This section applies if:
- (a) the Minister reasonably believes that a tree or other plant endangers the safety of anyone on public National Land; and
 - (b) either:
 - (i) the Minister reasonably believes that the tree or other plant, or part of it, must be removed immediately (whether or not the occupier of the land on which the tree or other plant is growing has been given a plant removal direction); or
 - (ii) an occupier of the land on which the tree or other plant is growing is subject to a plant removal direction and contravenes the direction.
- (2) The Minister may:
- (a) authorise persons to enter onto the land on which the tree or other plant is growing to remove the tree or other plant, or part of it; and
 - (b) recover the reasonable costs of the removal from the occupier of the land.

EXPOSURE DRAFT

Part 3 Protection and management of unleased National Land

Division 5 Removal and disposal of objects on unleased National Land

Section 36

Division 5—Removal and disposal of objects on unleased National Land

36 Object removal directions—unleased National Land

- (1) If a person places an object on unleased National Land, the Minister or a police officer may, by written notice (an *object removal direction*) given to the person, direct the person to remove the object, subject to section 37.
- (2) An object removal direction must specify the following:
 - (a) the unleased National Land to which it relates;
 - (b) the object to be removed;
 - (c) the period, starting after the day the direction is given, within which the object must be removed, which must be:
 - (i) not less than 5 business days; or
 - (ii) in an urgent case—a shorter period specified in the direction;
 - (d) that, if the object is not removed by the end of the specified period:
 - (i) the person may be committing an offence under subsection (6); and
 - (ii) the object may be removed under section 38 (which allows removal of objects by the Commonwealth) and disposed of under section 39 (which allows disposal of objects by the Commonwealth).
- (3) Without limiting the ways in which an object removal direction may be given to a person, such a direction may be given by securely attaching the direction to the object in a conspicuous place.
- (4) An object removal direction given to a person by attaching the direction to the object in a conspicuous place is taken to be given to the person on the day the direction is attached to the object.
- (5) A person stops being subject to an object removal direction if, after the direction is given, the placement of the object on the land becomes authorised by a permit, licence or works approval.
- (6) A person commits an offence of strict liability if the person:
 - (a) is subject to an object removal direction; and
 - (b) contravenes the direction.

Penalty: 10 penalty units.

37 Object removal directions—exceptions

- (1) Section 36 does not apply in relation to an object (other than a vehicle) if any of the following apply in relation to the placement of the object:
 - (a) it is authorised under a permit;
 - (b) it is authorised under a licence;
 - (c) it is authorised under a works approval;

EXPOSURE DRAFT

Protection and management of unleased National Land **Part 3**
Removal and disposal of objects on unleased National Land **Division 5**

Section 38

- (d) it is permitted under the Signs General Code and none of the authorisations mentioned in paragraphs (a) to (c) have been granted or are required.
- (2) For an object that is a vehicle, section 36 does not apply if the vehicle is parked on a public road or road related area in a way that does not contravene Territory law as applied by the *National Land (Road Transport) Ordinance 2014*.

Meaning of road related area

- (3) A **road related area** is any of the following:
- (a) an area that divides a public road;
 - (b) a footpath or nature strip on National Land that is adjacent to a public road;
 - (c) an area of public National Land designated for the use of bicycles, other personal transportation devices or animals;
 - (d) an area of public National Land that is not a public road but is used by the public for driving, riding or parking vehicles;
 - (e) a shoulder of a public road.

Examples: For the purposes of paragraph (3)(c), a personal transportation device might be a scooter, skateboard, unicycle or personal mobility device.

- (4) However, an area is not a **road related area** if the area is declared by the rules not to be a road related area.

38 Removal of objects by the Commonwealth

- (1) This section applies if:
- (a) a person:
 - (i) is subject to an object removal direction; and
 - (ii) contravenes the direction; or
 - (b) an object is on unleased National Land, and the Minister reasonably believes that the object is:
 - (i) abandoned; or
 - (ii) causing an obstruction or hazard on or near the unleased National Land.
- (2) The Minister may cause the object to be removed and placed in storage.
- (3) If the object is removed and placed in storage after a person who has been given an object removal direction has contravened the direction, the Minister must give the person a further notice (a **retrieval notice**) which states the following:
- (a) the place where the object is stored;
 - (b) that the person may collect the object from the place where it is stored if, within 20 business days after the retrieval notice is given, the person pays to the Commonwealth any reasonable amount specified in the notice for:
 - (i) the costs of repairing any damage to the unleased National Land caused by the removal of the object; and
 - (ii) the costs of removing the object; and
 - (iii) the costs of storing the object;

EXPOSURE DRAFT

Part 3 Protection and management of unleased National Land

Division 5 Removal and disposal of objects on unleased National Land

Section 39

- (c) that if, within the period specified in paragraph (b), any amount specified in the retrieval notice is not paid and the object collected from the place where it is stored:
 - (i) the object will become property owned by the Commonwealth; and
 - (ii) the Minister may sell or dispose of the object as the Minister thinks fit.
- (4) Neither the Commonwealth nor any person acting under this Ordinance is liable for any reasonable loss or damage (whether to the object or otherwise) caused by the removal or storage of an object under this section.

39 Disposal of objects by the Commonwealth

- (1) This section applies in relation to:
 - (a) an object that is the subject of a retrieval notice where subsection (3) applies; and
 - (b) an object covered by paragraph 38(1)(b) that has been removed and placed in storage.
- (2) The object becomes property owned by the Commonwealth, and the Minister may sell or dispose of the object as the Minister thinks fit.
- (3) This subsection applies if the person to whom the retrieval notice is given does not, within 20 business days after the notice is given:
 - (a) pay to the Commonwealth any amount specified in the notice; and
 - (b) collect the object from the place where it is stored.
- (4) If the object is sold by the Commonwealth, the proceeds of the sale must be applied as follows:
 - (a) first, in repaying to the Commonwealth:
 - (i) the amount (if any) specified in the retrieval notice (if any); and
 - (ii) the expenses of the sale;
 - (b) then, if the object was the subject of a retrieval notice—the balance, if any, to the person to whom the retrieval notice was given.

40 Retention area

- (1) The rules may declare an area of unleased National Land specified in the rule to be a retention area for the purposes of this Ordinance.
- (2) An object placed in storage by or on behalf of the Commonwealth under this Ordinance may, but need not be, placed in a retention area.

EXPOSURE DRAFT

Protection and management of unleased National Land **Part 3**
Temporary closing of public National Land to traffic **Division 6**

Section 41

Division 6—Temporary closing of public National Land to traffic

41 Minister may temporarily close public National Land to traffic

- (1) This section applies to public National Land other than a public road that is open to and used by vehicular and other traffic.

Example: A path, cycleway or carpark.

- (2) The Minister may temporarily close an area covered by subsection (1).
- (3) Before temporarily closing such an area, the Minister must, at least 5 business days before the area is to be closed, publish a notice about the proposal to close the area on the NCA's website.
- (4) Subsection (3) does not apply in urgent circumstances.

EXPOSURE DRAFT

Part 3 Protection and management of unleased National Land

Division 7 Emergency management

Section 42

Division 7—Emergency management

42 Emergency closure of permitted place

- (1) A senior police officer may, by written notice (an *emergency closure order*) given to a permit holder, close a permitted place if the officer reasonably believes that:
 - (a) a contravention of this Ordinance has happened, or is likely to happen, in relation to that place; and
 - (b) because of that contravention or likely contravention, the closure of the place is necessary to prevent or reduce undue risk to people or property.
- (2) An emergency closure order must state the following:
 - (a) the name of the senior police officer making the order;
 - (b) the name of the permit holder (if reasonably able to be ascertained);
 - (c) the grounds on which the order is made;
 - (d) when the order comes into force;
 - (e) when the order ends.
- (3) If an emergency closure order is in force for a permitted place, the permit is suspended for the period of the order.
- (4) A senior police officer who issues an emergency closure order must, as soon as reasonably practicable, give a copy of the order to the NCA chief executive.
- (5) In this section, *senior police officer* has the same meaning as in subsection 23WA(1) of the *Crimes Act 1914*.

43 Contravention of emergency closure order

A person who is a permit holder commits an offence of strict liability if:

- (a) an emergency closure order is in force in respect of a permitted place; and
- (b) the person contravenes the emergency closure order.

Penalty: 30 penalty units.

EXPOSURE DRAFT

Use of public National Land **Part 4**

General **Division 1**

Section 44

Part 4—Use of public National Land

Division 1—General

44 Use of public National Land—regulated activities

- (1) The use of public National Land for an activity set out in column 1 of an item of the following table is a *regulated activity* for the purposes of this Ordinance. Examples of some of those uses are set out in column 2 of the table.

Uses of public National Land that are regulated activities		
Item	Column 1 Activity on public National Land	Column 2 Examples
1	A cultural, recreational or commercial event	Festival, parade, show, performance, concert or other public entertainment
2	A not-for-profit event conducted by a community organisation or charity	Fundraising barbeque, fun run
3	An event that is a religious or ceremonial service or commemoration	Wedding, remembrance service
4	An organised sporting or team event that involves the erection or placement of a structure	Triathlon or other sporting competition
5	A commercial operation that offers to sell goods or provide services to the public	Coffee cart, food truck, paid health and fitness activity
6	Filming for a commercial purpose	
7	An event that involves the erection or placement of a structure	A public or private event that involves placement of a marquee

- (2) The rules may provide that the use of public National Land for a specified activity is not a *regulated activity* for the purposes of this Ordinance.

45 Use of public National Land for regulated activity without permit etc.

A person commits an offence of strict liability if:

- (a) the person uses public National Land for a regulated activity; and
- (b) the use is not authorised by any of the following:
 - (i) a permit;
 - (ii) a licence;
 - (iii) a works approval.

Penalty: 20 penalty units.

46 Contravention of condition of permit to use public National Land

A person commits an offence of strict liability if:

EXPOSURE DRAFT

Part 4 Use of public National Land

Division 1 General

Section 46

- (a) the person holds a permit that authorises the use of public National Land for a regulated activity; and
- (b) the permit is subject to a condition; and
- (c) the person contravenes the condition.

Penalty: 20 penalty units.

EXPOSURE DRAFT

Division 2—Permits to use public National Land for regulated activities

47 Application for permit to use public National Land for regulated activities

- (1) A person may apply to the Minister for a permit to use public National Land for a regulated activity.

Note: A regulated activity that involves the carrying out of works might require both a permit and a works approval.

Basic application requirements

- (2) The application must be in writing and must specify the following:
 - (a) the public National Land for which the permit is sought;
 - (b) the proposed use of the land;
 - (c) the period for which the permit is sought.
- (3) The application must be accompanied by the prescribed fee (if any).
- (4) The application must also include a plan that shows:
 - (a) the location, boundaries and dimensions of the public National Land for which the permit is sought; and
 - (b) where on the land the regulated activity is to take place.

Uses that involve placing an object on land

- (5) If the proposed use of the public National Land involves placing an object on the land, the application must include the following:
 - (a) the nature, size and intended use of the object;
 - (b) the period for which, and times when, the object will be on the land;
 - (c) any risks that the object may pose to the public, and how such risks are to be minimised;
 - (d) if placement of the object requires construction work on the land:
 - (i) the nature of the work; and
 - (ii) any risks of damage or injury that the construction work poses to the public or the land, and how such risks are to be minimised;
 - (e) any information that is required to be provided by the rules;
 - (f) any other information relevant to the suitability of placing the object on the land.

Uses that involve holding an event on land

- (6) If the proposed use of the public National Land involves holding an event on the land, the application must include the following:
 - (a) the nature of the event and the number of people expected to attend;
 - (b) during the period to be covered by the permit—the times when the event will be held on the land;

EXPOSURE DRAFT

Part 4 Use of public National Land

Division 2 Permits to use public National Land for regulated activities

Section 48

- (c) any risks of damage or injury that the holding of the event pose to the public or the land, and how such risks are to be minimised;
- (d) any information that is required to be provided by the rules;
- (e) any other information relevant to the suitability of holding the event on the land.

48 Request for further information

- (1) The Minister may, by written notice given to a person applying for a permit, request the person to give the Minister further information in relation to the application, within the period specified in the notice.
- (2) A period specified under subsection (1) must be reasonable, having regard to the circumstances.
- (3) The Minister may refuse to consider, or further consider, the application until the information is provided.
- (4) 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.

49 Withdrawal of application

A person applying for a permit may, by written notice given to the Minister, withdraw the application at any time before the Minister makes a decision on the application.

50 Decision on application for permit

- (1) This section applies if the Minister receives an application under section 47 for a permit to use public National Land for a regulated activity for a particular period.

Minister to consider application for permit

- (2) The Minister must consider the application for a permit and must:
 - (a) if the Minister is satisfied that the proposed use of the land is suitable—grant the permit to the applicant:
 - (i) for the period sought by the applicant; or
 - (ii) for another period; or
 - (b) otherwise—refuse to grant the permit to the applicant.
- (3) 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.

Time frame for Minister to make decision

- (4) The Minister must make a decision in relation to the application:
 - (a) within 20 business days after receiving the application; or

EXPOSURE DRAFT

- (b) if the Minister has required the applicant to provide further information about the proposed use of the land—within 20 business days after such further information is provided.
- (5) If the Minister does not make a decision in relation to the application within the relevant 20 business day period, the Minister is taken to have refused to grant the permit at the end of that period.

Minister to give applicant notice of decision

- (6) The Minister must give the applicant written notice of the Minister’s decision. If the Minister refuses to grant the permit, the notice must also include reasons for the refusal.
- (7) Subsection (6) does not apply to a decision to refuse to grant a permit that is taken to be made under subsection (5).

Minister may impose conditions on permit

- (8) The Minister may grant the permit subject to any condition the Minister reasonably believes is necessary, having regard to the proposed use of the land, including (without limitation) conditions to:
 - (a) minimise or manage any risks of damage or injury to the public from the conduct of the regulated activity; or
 - (b) protect the public National Land or any other property; or
 - (c) ensure the applicant is able to satisfy any obligations under the permit and under this Ordinance.

51 Form and contents of permit

- (1) A permit must be in writing, and must specify the following:
 - (a) the name of the permit holder;
 - (b) the location of the public National Land covered by the permit;
 - (c) the period for which the permit is granted;
 - (d) the permitted use of the land;
 - (e) any conditions on the permit;
 - (f) any other matter the Minister considers relevant.
- (2) A permit remains in force for the period specified in the permit, subject to subsection 52(4), unless sooner surrendered or cancelled.
- (3) The Minister must not grant a permit for a period exceeding 5 years.

52 Application for renewal of permit

- (1) A permit holder may apply to the Minister to renew (or further renew) the permit for a period not exceeding 5 years.
- (2) The application must be in writing and be given to the Minister:
 - (a) at least 60 days, but not more than 90 days, before the permit expires; or
 - (b) within a different period allowed by the Minister.

EXPOSURE DRAFT

Part 4 Use of public National Land

Division 2 Permits to use public National Land for regulated activities

Section 52

- (3) The application must be accompanied by the prescribed fee (if any).

Continuation of existing permit

- (4) If a permit holder applies to renew a permit under this section, the permit remains in force until the application is decided (unless the application is withdrawn, or the permit is surrendered or cancelled before the application for renewal is decided).

Minister to consider application for renewal of permit

- (5) The Minister must consider the application for renewal and must:
- (a) if the Minister is satisfied that the use of the land remains suitable—renew the permit:
 - (i) for the period sought by the applicant; or
 - (ii) for another period; or
 - (b) otherwise—refuse to renew the permit.
- (6) In considering an application for renewal, the Minister must have regard to:
- (a) the applicant’s use of the public National Land; and
 - (b) any other matter the Minister considers relevant.

Time frame for Minister to make decision

- (7) The Minister must make a decision in relation to the application for renewal:
- (a) within 20 business days after receiving the application; or
 - (b) if the Minister has required the applicant to provide further information about the renewal of the permit—within 20 business days after such further information is provided.
- (8) If the Minister does not make a decision in relation to the application within the relevant 20 business day period, the Minister is taken to have refused to renew the permit at the end of that period.

Minister to give applicant notice of decision

- (9) The Minister must give the applicant written notice of the Minister’s decision. If the Minister refuses to renew the permit, the notice must also include reasons for the refusal.
- (10) Subsection (9) does not apply to a decision to refuse to renew a permit that is taken to be made under subsection (8).

Minister may impose conditions on renewed permit

- (11) The Minister may renew the permit subject to any additional or amended conditions the Minister reasonably believes are appropriate.
- (12) A renewed permit comes into force immediately after the expiry of the existing permit.

EXPOSURE DRAFT

53 Replacement of lost, stolen or destroyed permit

The Minister may issue a replacement permit to a permit holder if satisfied that the original permit has been lost, stolen or destroyed.

54 Failure of permit holder to notify change of name or address

A person who is a permit holder commits an offence of strict liability if:

- (a) the person's name or address changes; and
- (b) the person does not, within 20 business days after the change, give the Minister written notice of the change.

Penalty: 1 penalty unit.

55 Rights of permit holder in relation to objects

- (1) If a permit authorises the placement of an object on public National Land, the permit holder may restrict the public use of the object if:
 - (a) the permit holder reasonably believes that the restriction is necessary to ensure its use in accordance with the permit; and
 - (b) the restriction does not contravene the permit, or a condition of the permit; and
 - (c) the restriction does not contravene a law in force in the Territory.
- (2) Nothing in subsection (1) prevents a place that is a public place for the purposes of a law in force in the Territory from continuing to be a public place for the purposes of that law.

56 Surrender of permit

A permit holder may surrender the permit by giving written notice of the surrender to the Minister.

57 Cancellation of permit

Circumstances in which permit may be cancelled

- (1) The Minister may cancel a permit in any of the following circumstances:
 - (a) the permit was granted in error;
 - (b) the permit holder's application for the grant or renewal of the permit was false or misleading in a material particular;
 - (c) the permit holder contravenes a condition of the permit.

Process for cancellation of permit

- (2) Before cancelling the permit, the Minister must give the permit holder written notice:
 - (a) stating that the Minister proposes to cancel the permit; and
 - (b) setting out the reasons for the proposed cancellation; and

EXPOSURE DRAFT

Part 4 Use of public National Land

Division 2 Permits to use public National Land for regulated activities

Section 57

- (c) inviting the permit holder to make a written submission in response to the notice:
 - (i) if the Minister considers that the circumstances require urgent action—within a period specified in the notice, which must be at least 24 hours; or
 - (ii) in any other case—within a period specified in the notice, which must be at least 10 business days.
- (3) The Minister must have regard to any submission made by the permit holder within the period specified in the notice.
- (4) The Minister must give the permit holder written notice of the cancellation of a permit. The notice must set out the reasons for the cancellation.
- (5) The cancellation takes effect:
 - (a) on the day the permit holder is given notice of the cancellation; or
 - (b) if the notice specifies a later day—on that later day.
- (6) If the Minister decides not to cancel the permit, the Minister must, by written notice given to the permit holder, notify the permit holder of the decision.

Division 3—Licences of unleased National Land

58 Licences of unleased National Land

Power to grant licences

- (1) Subject to this Ordinance, the Minister may grant to a person a licence to occupy or use unleased National Land, including any building or structure on the land.

Consistency with National Capital Plan

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

Terms on which licences may be granted

- (3) A licence must be in writing and must specify the following:
 - (a) the name of the licensee;
 - (b) the location of the unleased National Land covered by the licence;
 - (c) the period for which the licence is granted;
 - (d) the permitted use of the land;
 - (e) the terms and conditions of the licence;
 - (f) any other matters prescribed by the rules.

59 Use of land for licensed purpose

National Land in relation to which a licence 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 licence.

60 Minister's power to terminate licence

- (1) The Minister may, by written notice (the *termination notice*) given to a licensee, terminate the licence if:
 - (a) the licensee contravenes the licence; and
 - (b) the Minister has complied with section 61.
- (2) The termination notice takes effect immediately after the end of the following period:
 - (a) if the licence does not provide for a period for rectifying the contravention—the period of 10 business days starting after the day the notice is given;
 - (b) if the licence provides for a period for rectifying the contravention, whichever of the following periods ends later:
 - (i) the period of 10 business days starting after the day the notice is given;
 - (ii) the period specified in the licence for rectifying the contravention.

EXPOSURE DRAFT

Part 4 Use of public National Land

Division 3 Licences of unleased National Land

Section 61

61 Steps before giving termination notice

- (1) The Minister must not terminate a licence under subsection 60(1) unless:
 - (a) the notice required by subsection (2) has been given; and
 - (b) the Minister has considered the reasons (if any) submitted by the licensee in accordance with paragraph (2)(c).
- (2) The Minister must give a notice in writing to the licensee:
 - (a) specifying the contraventions of the licence in respect of which the notice is given; and
 - (b) stating that the Minister is considering terminating the licence; and
 - (c) inviting the licensee to submit to the Minister written reasons, within the period ending not later than 15 business days after the licensee is given the notice, why the licensee considers that the licence should not be terminated.

62 Recovery of lands by Commonwealth

Meaning of unlawful occupier

- (1) A person is an **unlawful occupier** if:
 - (a) the person was a licensee of National Land; and
 - (b) the licence 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.

63 Evidence of ending of licence

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

Part 5—Other activities on unleased National Land

64 Damage to fences, signs or markers

- (1) A person commits an offence if:
- (a) the person damages or destroys a fence, sign or marker at a place; and
 - (b) the place is unleased National Land; and
 - (c) the damage or destruction is not authorised by:
 - (i) a permit; or
 - (ii) a licence; or
 - (iii) a works approval.

Penalty: 10 penalty units.

- (2) Strict liability applies to paragraph (1)(b).

65 Leaving gates open

- (1) A person commits an offence if:
- (a) the person leaves open any gate at a place; and
 - (b) the place is unleased National Land; and
 - (c) the Minister has caused to be placed on the gate a notice requiring it to be kept closed when not in use.

Penalty: 1 penalty unit.

- (2) Strict liability applies to paragraphs (1)(b) and (c).

- (3) A person commits an offence if:
- (a) the person leaves open a gate on any land; and
 - (b) as a result, any livestock stray, wander or are at large at a place; and
 - (c) the place is unleased National Land.

Penalty: 2 penalty units.

- (4) Strict liability applies to paragraph (3)(c).

66 Damaging trees etc.

- (1) A person commits an offence if:
- (a) the person damages or destroys any tree, plant, garden, plantation or afforestation area; and
 - (b) the area is on unleased National Land; and
 - (c) the damage or destruction is not authorised by:
 - (i) a permit; or
 - (ii) a licence; or
 - (iii) a works approval.

EXPOSURE DRAFT

Part 5 Other activities on unleased National Land

Section 67

Penalty: 20 penalty units.

- (2) Strict liability applies to paragraph (1)(b).

67 Earth etc. not to be taken without permit

- (1) A person commits an offence if:
- (a) the person excavates or removes from a place any earth, sand, gravel, stones or clay; and
 - (b) the place is unleased National Land; and
 - (c) the excavation or removal is not authorised under:
 - (i) a permit; or
 - (ii) a licence; or
 - (iii) a works approval.

Penalty: 20 penalty units.

- (2) Strict liability applies to paragraph (1)(b).

68 No unauthorised camping on unleased National Land

- (1) A person commits an offence of strict liability if:
- (a) the person camps on unleased National Land; and
 - (b) the camping is not authorised by a permit.

Note: Camping is only authorised under a permit authorising a separate regulated activity on public National land (see section 44).

Penalty: 2 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day during which the contravention continues.

Part 6—Miscellaneous

69 Police powers

Police powers in relation to unleased National Land

- (1) A police officer, with such assistance and using such force as is necessary and reasonable, may do any or all of the following:
 - (a) if the officer reasonably suspects a person of committing, or attempting to commit, an offence under Part 5 (except under s 65, about leaving gates open)—prevent the commission, or attempted commission, of such offence;
 - (b) remove from unleased National Land:
 - (i) a person mentioned in paragraph (a); or
 - (ii) an animal or vehicle present upon it as a result of the suspected commission, or attempted commission, of an offence mentioned in paragraph (a).

Requirement to give name and address to police officer

- (2) A police officer may require any person reasonably suspected of having committed, committing or attempting to commit, an offence under Part 5 to provide that person's name and address to the police officer.
- (3) A person commits an offence if:
 - (a) the person is required under subsection (2) to provide that person's name and address; and
 - (b) the person refuses or fails to do so.

Penalty: 5 penalty units.

70 Administrative review of Minister's decisions

- (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 A decision by the Minister to ...	Column 2 made under ...
1	fix or change the level of a public road	paragraph 11(6)(a)
2	approve a plan identifying the boundaries of a public road	paragraph 12(5)(a)

EXPOSURE DRAFT

Part 6 Miscellaneous

Section 71

Reviewable decisions under this Ordinance		
Item	Column 1 A decision by the Minister to ...	Column 2 made under ...
3	refuse to approve the use of a temporarily closed public road	paragraph 16(3)(b)
4	impose a condition on an approval to use a temporarily closed public road	subsection 16(5)
5	declare a public road permanently closed, completely or partly	subsection 20(1)
6	refuse to extend the period for providing further information in relation to an application for a permit	subsection 48(4)
7	grant a permit for a period different from that sought	subparagraph 50(2)(a)(ii)
8	refuse to grant a permit	paragraph 50(2)(b)
9	impose a condition on a permit	subsection 50(8)
10	refuse to vary the period within which an application may be made to renew a permit	paragraph 52(2)(b)
11	renew a permit for a period different from that sought	subparagraph 52(5)(a)(ii)
12	refuse to renew a permit	paragraph 52(5)(b)
13	impose or amend a condition on a renewed permit	subsection 52(11)
14	cancel a permit	subsection 57(1)
15	terminate a licence	subsection 60(1)

71 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 72) 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 1 or 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 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*.

72 Rule-making power

- (1) The Minister administering Part II of the Planning and Land Management Act 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, surrender or replacement of permits or licences; and
 - (b) fees payable for the exercise of a power, or the performance of a function, by a 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.

73 NCA chief executive may prescribe fees

- (1) Subject to subsection (2), the NCA chief executive may, by legislative instrument, prescribe in relation to those areas of National Land managed by the NCA under subsection 6(3):
 - (a) fees payable in relation to the grant, variation, renewal, surrender or replacement of permits or licences; and
 - (b) fees payable for the exercise of a power, or the performance of a function, by a Minister 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.

74 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.

EXPOSURE DRAFT

Part 7 Application, savings and transitional provisions

Section 75

Part 7—Application, savings and transitional provisions

75 Transitional—definitions

In this Part:

applied provisions, in relation to National Land, has the same meaning as in 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* was repealed by the *Australian Capital Territory National Land (Leased) Ordinance 2021*.

old permit means any of the following issued or granted in relation to National Land under the applied provisions that was in force immediately before the transition time:

- (a) a permit issued under subsection 4(1) of the *Protection of Lands Ordinance 1937* to go upon National Land and remove substances from that land;
- (b) a permission granted under subsection 9(1) of the *Roads and Public Places Ordinance 1937* to make or place a structure across, or open up or break the surface of, a public place;
- (c) a permit granted under section 15A of the *Roads and Public Places Ordinance 1937* to place an object in, over or across a public place;
- (d) a permit granted under subsection 8B(1) of the *Trespass on Commonwealth Lands Ordinance 1932* to occupy National Land for a purpose mentioned in that subsection.

transition time means the time this Ordinance commences.

76 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.

77 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.

78 Transitional—old permits

Subject to this Ordinance, an old permit:

- (a) continues in force after the transition time under this Ordinance subject to any conditions applying to the old permit immediately before the transition time; and
- (b) has effect, after the transition time, as if it had been granted under this Ordinance.

79 Transitional—instruments other than old permits

An instrument made, granted or issued before the transition time under or for the purposes of an applied provision has effect, on and after that time, as if it was made, granted or issued under or for the purposes of this Ordinance, and this Ordinance applies in relation to that instrument accordingly.

80 Transitional—delegations

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

81 Transitional—continuing licences of unleased National Land

Subject to this Ordinance, a licence to use unleased National Land that is in force immediately before the transition time:

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