



Australian Capital Territory

Protection of Lands Act 1937

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The republished law

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- authorised republications to which the *Legislation Act 2001* applies
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Australian Capital Territory

PROTECTION OF LANDS ACT 1937

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 28 February 1995

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AUSTRALIAN CAPITAL TERRITORY

PROTECTION OF LANDS ACT 1937

An Act to provide for the protection of Territory Land

Short title

1. This Act may be cited as the *Protection of Lands Act 1937*.¹

Interpretation

2. In this Act, unless the contrary intention appears—

“carriageway”, in relation to a public street, includes the gutter, if any, of the public street;

“lands” means Territory Land;

“Motor Traffic Act” means the *Motor Traffic Act 1936*;

“off-street parking area” has the same meaning as in the Motor Traffic Act;

“permit” means a permit issued under this Act;

“Protection of Lands Officer” means a Protection of Lands Officer under section 2B;

“public street” has the same meaning as in the Motor Traffic Act;

“retention area” means an area declared under section 9 to be a retention area;

“vehicle” has the same meaning as in the Motor Traffic Act.

Position of Crown

2AA. The following provisions do not bind the Territory Crown:

Subsections 3 (1), 6A (3) and 7 (1).

Application

2A. This Act does not apply to or in relation to any lands placed under the control of the Commissioner for Housing for the Australian Capital Territory pursuant to the *Housing Assistance Act 1987*.

Protection of Lands Officer

2B. (1) There shall be 1 or more Protection of Lands Officers.

(2) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of a Protection of Lands Officer.

(3) A Protection of Lands Officer shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (2).

Sand, gravel etc. not to be taken without permit

3. (1) A person shall not, without a permit in that behalf issued under this Act, take from any lands any stone, shell, sand, gravel, clay or earth.

Penalty: 50 penalty units.

(2) The Minister may, for such period as he thinks fit, by notice published in the *Gazette*, suspend the operation of this section in respect of any substance or in respect of any lands, and this section shall thereupon cease to apply in respect of that substance or those lands, as the case may be, until the expiration of the period of suspension, or until the suspension is sooner revoked, whichever first happens.

(3) The Minister may, at any time, by notice published in the *Gazette*, revoke any such suspension.

Power to grant permits

4. (1) The Minister or a Protection of Lands Officer may issue permits to go upon any lands and to take therefrom any substance referred to in the last preceding section.

(2) A permit may be limited to any particular substance, and to any particular lands, district or locality.

(3) A permit shall continue in force for the period specified therein and no longer, and shall not be issued for any period exceeding twelve months.

(4) A permit shall only be granted over lands included in a lease in cases where the substances are reserved to, or are the property of, the Crown.

(5) A permit issued under this section shall not extend to authorize the taking from any lands any substance which is, or appears to be, metalliferous.

Terms and conditions of permits

5. (1) The terms and conditions on which a permit may be issued shall be as determined by the Minister, and any permit may be cancelled by the Minister or a Protection of Lands Officer for non-compliance by the holder of the permit with any term or condition of the permit.

(2) Where the Minister or a Protection of Lands Officer cancels any permit, the Minister or the officer shall forward by post to the person whose permit has been cancelled, at his address as stated in that permit, notice of the cancellation of the permit and the cancellation shall be deemed to take effect at the time the notice would have been delivered in the ordinary course of post.

Fees for permits

6. The fee payable for a permit shall be at the rate of \$5 per month or portion of a month for each vehicle to be used for taking any substance in pursuance of the permit.

Sand and gravel pits

6A. (1) The Minister may, by notice in the *Gazette*, declare any lands to be a sand and gravel pit and may by like notice revoke any such declaration.

(2) Notwithstanding anything contained in sections three and four of this Act, the Minister may, by notice published in a newspaper circulating in the Territory—

(a) declare, with respect to any sand and gravel pit, that any stone, shell, sand, gravel, clay or earth may, notwithstanding anything contained in sections three and four of this Act, be taken therefrom on payment of such charges and subject to such conditions as are set out in the notice; and

(b) vary from time to time any such charge or condition,

and any such substance may be taken from the sand and gravel pit on payment of the charges and subject to the conditions declared by the Minister in pursuance of this section.

(3) Any person who takes any stone, shell, sand, gravel, clay or earth from any sand and gravel pit without paying the charges, and complying with the conditions set out in a notice referred to in the last preceding subsection shall be guilty of an offence and liable to a penalty of Forty dollars and, in addition to any penalty that may be imposed, the Court may order the defendant to pay the charges payable under this section in respect of any such substance so taken and the like proceedings may be taken upon the order as if the order had been a judgment of the Court in favour of the Territory.

(4) A certificate by the Minister or a Protection of Lands Officer specifying the charges owing to the Territory in respect of any such substance so taken, shall be *prima facie* evidence of the matters stated therein.

Substances etc. not to be placed on lands

7. (1) A person shall not, without the authority of the Minister or a Protection of Lands Officer (proof whereof shall lie upon the person accused), deposit, or cause to be deposited, on any unleased lands, any substance, material or thing.

Penalty: 30 penalty units.

(2) A person who, in pursuance of a permit in force under the *Roads and Public Places Act 1937*, places an object in, over or across a public place does not, by reason of so placing the object, commit an offence against subsection (1).

Excavations or obstructions on lands to be lighted

8. Where any excavation or obstruction is made, or any substance or material is placed, on any unleased lands with the authority of the Minister or a Protection of Lands Officer, or any work is being carried on on any unleased lands entailing the opening up or breaking of the surface thereof, the person making, or permitting or causing to be made, the excavation or obstruction, or placing the substance or material, or permitting or causing the substance or material to be placed, on the lands, or carrying out the works, shall cause sufficient lights to be affixed in a proper place to indicate clearly the excavation, obstruction, substance, material or works, and continue those lights every night from sunset to sunrise while the excavation, obstruction, substance, material or works continue, and shall during all that time at his own expense cause the place on which they are continued to be sufficiently fenced or enclosed to prevent any danger or inconvenience to any person.

Penalty: 30 penalty units.

Retention area

9. The Minister may, from time to time, by notice published in the *Gazette*, declare an area of land specified in the notice to be a retention area for the purposes of this Act.

Substance etc. may be removed from certain land

10. (1) Subject to subsection (2), the Minister or a Protection of Lands Officer may cause to be removed and placed in a retention area any substance, material or thing that is on—

- (a) land lying between the carriageway of a public street and the boundary of leased land;
- (b) any part of a public street, including land lying between the carriageways of a public street; or
- (c) any other unleased land.

(2) Subsection (1) does not apply to or in relation to—

- (a) a substance, material or thing that is on the land with the authority of the Minister or a Protection of Lands Officer or by virtue of any other law of the Territory;
- (b) an object that was placed on the land in pursuance of a permit in force under the *Roads and Public Places Act 1937*; or
- (c) a vehicle that is parked—
 - (i) on the carriageway of a public street; or
 - (ii) in an off-street parking area,

unless the Minister or officer has reasonable grounds for believing that the vehicle has been abandoned.

(3) A substance, material or thing that is on an area of land at the time at which the land is declared, under section 9, to be a retention area shall, for the purposes of this section and sections 11 to 15 (inclusive), be deemed to have been placed in the retention area in pursuance of subsection (1).

Substance etc. to remain in retention area

11. Any substance, material or thing placed in a retention area shall remain in that area—

- (a) where a claim under section 13 is made—until the claim is determined or, where a period is fixed under paragraph 13 (1) (b), until the expiration of that period; or
- (b) where no claim is made—for a period of 3 months from the date of publication of a notice under section 12 in relation to the substance, material or thing.

Publication of notice

12. Within 7 days of the removal from the land of the substance, material or thing, the Minister or a Protection of Lands Officer shall cause to be inserted in a daily newspaper circulating in the Territory a notice stating—

- (a) particulars of the substance, material or thing and of the place from which it was removed;
- (b) the retention area in which the substance, material or thing is stored; and
- (c) a statement that any person claiming to be entitled to the possession of the substance, material or thing may apply, in accordance with the provisions of section 13, to the Magistrates Court for its return.

Application for return of substance etc.

13. (1) A person may, within a period of 2 weeks from the date of publication of a notice under section 12, or within such further time as the Magistrates Court, on application made before or after the expiration of that period, allows, apply to the Court for an order—

- (a) that he is entitled to the possession of the substance, material or thing the subject of the notice; and
- (b) that the substance, material or thing be delivered to him at the retention area in which it is being held, within such period as the Court fixes, on payment by him to the Territory of such removal expenses as the Court determines.

(2) Upon an application being made under subsection (1) the Court shall hear and determine the matter.

(3) An order made under subsection (1) does not affect the right of any other person to claim the matter the subject of the order from the applicant in a court of competent jurisdiction.

Disposal of substance etc.

14. Where, in respect of a substance, material or thing removed in pursuance of this Act—

- (a) no application under section 13 is made within a period of 3 months from the date of publication of the notice under section 12; or
- (b) where an application is made, an amount ordered by the Magistrates Court to be paid to the Territory is not so paid within 3 months of the date of the order,

the ownership of the substance, material or thing shall be deemed, for all purposes, to vest in the Territory and the substance, material or thing may be disposed of in such manner as the Minister directs.

No liability for damage caused by removal etc.

15. The Territory or a person acting in pursuance of this Act is not liable for reasonable damage caused by the removal or retention of a substance, material or thing.

Certificate evidence of contents

16. For the purposes of sections 7 and 10, a certificate given by the Chief Executive that land is unleased land is evidence of the contents of the certificate.

NOTE

1. The *Protection of Lands Act 1937* as shown in this reprint comprises Act No. 33, 1937 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Protection of Lands Ordinance 1937</i>	33, 1937	23 Dec 1937	23 Dec 1937	
<i>Protection of Lands Ordinance 1944</i>	4, 1944	3 Feb 1944	3 Feb 1944	—
<i>Ordinances Revision Ordinance 1959</i>	21, 1959	23 Dec 1959	31 Dec 1959	—
<i>Ordinances Revision (Decimal Currency) Ordinance 1966</i>	19, 1966	23 Dec 1966	23 Dec 1966	—
<i>Protection of Lands Ordinance 1976</i>	8, 1976	24 Feb 1976	24 Feb 1976	—
<i>Protection of Lands (Amendment) Ordinance 1976</i>	73, 1976	30 Dec 1976	30 Dec 1976	—
<i>Protection of Lands (Amendment) Ordinance 1980</i>	11, 1980	2 May 1980	2 May 1980	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Housing Assistance Ordinance 1987</i>	36, 1987	29 July 1987	19 Aug 1987 (see <i>Gazette</i> 1987, No. S213)	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S1)	—

Self-Government day 11 May 1989

NOTE—continued

Table 2

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Self-Government (Consequential Amendments) Act 1991</i>	53, 1991	2 Oct 1991	2 Oct 1991	—
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Statute Law Revision (Penalties) Act 1994</i>	81, 1994	29 Nov 1994	Ss. 1 and 2: 29 Nov 1994 Remainder: 29 Nov 1994 (see <i>Gazette</i> 1994, No. S269, p. 2)	—
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	97, 1994	15 Dec 1994	Ss. 1 and 2: 15 Dec 1994 Remainder: 15 Dec 1994 (see <i>Gazette</i> 1994, No. S293)	Part III (ss. 4-9)

NOTE—continued**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Title	am. No. 38, 1989
S. 2	am. Nos. 8 and 73, 1976; No. 38, 1989; Act No. 97, 1994
S. 2AA.....	ad. Act No. 44, 1993
S. 2A	ad. No. 36, 1987
S. 2B	ad. Act No. 97, 1994
S. 3	am. No. 19, 1966; Act No. 81, 1994
Ss. 4, 5.....	am. Act No. 97, 1994
S. 6	am. No. 19, 1966; No. 11, 1980
S. 6A	ad. No. 4, 1944
	am. No. 21, 1959; No. 19, 1966; No. 38, 1989; Act No. 97, 1994
S. 7	am. No. 19, 1966; Nos. 8 and 73, 1976; Acts Nos. 81 and 97, 1994
S. 8	am. No. 19, 1966; Acts Nos. 81 and 97, 1994
S. 9	ad. No. 8, 1976
S. 10	ad. No. 8, 1976
	am. No. 73, 1976; Act No. 97, 1994
S. 11	ad. No. 8, 1976
S. 12	ad. No. 8, 1976
	am. No. 67, 1985; Act No. 97, 1994
S. 13	ad. No. 8, 1976
	am. No. 67, 1985; Act No. 53, 1991
S. 14	ad. No. 8, 1976
	am. No. 67, 1985; No. 38, 1989
S. 15	ad. No. 8, 1976
	am. No. 38, 1989
S. 16	ad. No. 8, 1976
	am. No. 38, 1989; Act No. 38, 1994