

No. 72 of 1976

AN ORDINANCE

To amend the *Roads and Public Places Ordinance 1937*.

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this twenty-third day of December, 1976.

JOHN R. KERR
Governor-General.

By His Excellency's Command,
A. A. STALEY
Minister of State for the Capital Territory.

ROADS AND PUBLIC PLACES (AMENDMENT) ORDINANCE 1976

1. This Ordinance may be cited as the *Roads and Public Places (Amendment) Ordinance 1976*.^{*} Short title.

2. In this Ordinance, "Principal Ordinance" means the *Roads and Public Places Ordinance 1937*.[†] Principal Ordinance.

3. Section 2 of the Principal Ordinance is amended by inserting after the definition of "owner" the following definition:— Definitions.

"'permit' means a permit granted under this Ordinance;".

4. Section 8 of the Principal Ordinance is amended—

- (a) by adding at the end of paragraph (a) the word "or"; and
- (b) by omitting paragraphs (b) and (c) and substituting the following paragraph:—

"(b) makes any excavation in a public place;".

^{*} Notified in the *Australian Government Gazette* on 30 December 1976.
[†] Ordinance No. 24, 1937 as amended by No. 21, 1959; and No. 19, 1966.

Permission to place culverts, &c., across, and to interfere with the surfaces of, public places.

5. Section 9 of the Principal Ordinance is amended—

- (a) by inserting after the words “any public place” the words “, subject to sub-section (2),”; and
- (b) by adding at the end thereof the following sub-section:—

“ (2) Where—

(a) the Minister grants permission to a person to open up or break the surface of a public place; and

(b) the permission is granted in connexion with the granting of a permit under this Ordinance,

the prescribed fee is not payable.”.

Excavations, &c., on public places to be lighted.

6. Section 10 of the Principal Ordinance is amended—

- (a) by omitting the words “excavation or obstruction” (wherever occurring) and substituting the word “excavation”; and
- (b) by omitting the words “excavation, obstruction,” (wherever occurring) and substituting the word “excavation,”.

Exhibition of advertisements or notices.

7. Section 12 of the Principal Ordinance is amended by inserting before the words “an authorized officer” the words “the Minister or”.

Repair of damage to public places.

8. Section 14 of the Principal Ordinance is amended—

- (a) by omitting the words “, whether acting with the permission of the Minister or an authorized officer or not,”; and

- (b) by adding at the end thereof the following sub-section:—

“ (2) Sub-section (1) applies whether or not the person was acting with the permission of the Minister or an authorized officer or in pursuance of a permit granted to him under this Ordinance.”.

9. Section 15 of the Principal Ordinance is repealed and the following sections are substituted:—

Penalties.

“ 15. Where a person is guilty of an offence against section 4, 5, 7, 8, 11, 12 or 13, he is liable, on conviction, to a penalty not exceeding \$100.

Objects in public places.

“ 15A. The Minister may, upon the application of a person, grant to the person a permit to place an object, other than an object of a kind referred to in paragraph 8 (a), in, over or across a public place.

Application for permit.

“ 15B. An application for the grant of a permit to place an object in, over or across a public place—

- (a) shall be made in writing to the Minister and signed by or on behalf of the applicant;

- (b) shall specify the place in respect of which the permit is sought;
- (c) shall be accompanied by a plan clearly showing—
 - (i) the location, boundaries and dimensions of the place in respect of which the permit is sought; and
 - (ii) if it is not proposed to move the object whilst the permit is in force—the proposed position of the object in, over or across that place;
- (d) shall clearly indicate the nature of the object and give particulars of its design and size;
- (e) shall specify the use to which it is intended the object will be put;
- (f) shall specify the hours during which it is proposed the object will remain in, over or across the place;
- (g) shall give particulars of any measures proposed to be adopted in connexion with the use of the object to safeguard the health and provide for the safety, comfort and convenience of persons using the place or a place adjacent to or near the place; and
- (h) where installation or construction work is proposed to be carried out in or on the place for the purpose of placing the object in, over or across the place—
 - (i) shall specify the nature of the work;
 - (ii) shall give particulars of the methods to be employed in the execution of the work; and
 - (iii) shall give particulars of any measures proposed to be adopted in connexion with the work to protect the safety of persons using the place or a place adjacent to or near the place.

“ 15C. (1) The Minister shall consider each application for a permit and shall—

Grant or
refusal of
permit.

- (a) approve of the grant to the applicant of the permit; or
- (b) refuse to grant the permit to the applicant.

“ (2) For the purpose of determining an application for a permit to place an object in, over or across a public place, the Minister shall have regard to—

- (a) whether the place is a suitable place in, over or across which to place the object;
- (b) whether the object will be structurally sufficient, safe and stable;
- (c) the interests of the public and, in particular—
 - (i) whether the object, placed in, over or across the place, would be likely to be to the benefit or detriment of persons using the place or a place adjacent to or near the place; and

- (ii) whether adequate provision is proposed to be made in connexion with the use of the object to safeguard the health and provide for the safety, comfort and convenience of persons using the place or a place adjacent to or near the place;
- (d) the interests of persons carrying on business in the vicinity of the place and, in particular, the interests of a person carrying on, in the vicinity of the place, a business similar to the business, if any, carried on, in the vicinity of the place, by the applicant; and
- (e) where installation or construction work is proposed to be carried out in or on the place for the purpose of placing the object in, over or across the place—
 - (i) whether it is desirable to allow the work to be carried out in or on the place;
 - (ii) whether the work will be suitable for the purpose; and
 - (iii) whether adequate provision is proposed to be made in connexion with the work to protect the safety of persons using the place or a place adjacent to or near the place.

Permit may
be subject to
conditions.

“15D. Where the Minister approves of the grant to an applicant of a permit to place an object in, over or across a public place, the Minister may grant the permit subject to such of the following conditions as he thinks fit:—

- (a) that the object will be of a type or design specified by the Minister;
- (b) that the object will be properly maintained and will not be allowed to become structurally insufficient, unsafe or unstable;
- (c) that the holder of the permit will not allow the object, whether directly or indirectly, to adversely affect the health or safety of persons using the place or a place adjacent to or near the place;
- (d) that adequate provision will be made for the disposal of refuse and waste from, and for the drainage of, the place;
- (e) that, during the hours between sunset and sunrise that the object is in the place, the place will be illuminated in such a manner as to indicate clearly the object;
- (f) that the place will be fenced or enclosed in such a manner as to prevent persons being endangered or inconvenienced by the object;
- (g) that any installation or construction work to be carried out in or on the place for the purpose of placing the object in, over or across the place will be carried out in a proper, workmanlike and safe manner;

- (h) that the applicant will insure himself and keep himself insured against liability in respect of—
- (i) death, bodily injury or illness; or
 - (ii) loss of, or damage to, property,
- occurring in connexion with the object.

“ 15E. (1) Where the Minister approves of the grant to an applicant of a permit, the Minister shall notify the applicant in writing of the grant and of any conditions to which the permit is subject and shall, upon payment of the prescribed fee, issue the permit to the applicant. Grant of permit.

“ (2) A permit granted under this Ordinance shall clearly identify the place in respect of which the permit is granted and shall specify—

- (a) the name and address of the person to whom the permit is granted;
- (b) the object permitted to be placed in, over or across the place;
- (c) the use to which the object may be put;
- (d) the hours during which the object may remain in, over or across the place;
- (e) the period for which the permit is granted; and
- (f) the conditions, if any, to which the permit is subject.

“ 15F. The Minister may, upon any of the following grounds, cancel a permit authorizing a person to place an object in, over or across a public place:— Cancellation of permit.

- (a) that the permit was granted in error or in consequence of a false statement made or misleading information furnished by the holder of the permit;
- (b) that the holder of the permit has failed to take reasonable steps to prevent the object being used for a purpose other than the purpose specified in the permit;
- (c) that the holder of the permit has permitted the object to remain in the public place at a time other than a time allowed by the permit;
- (d) that the holder of the permit has failed to comply with a condition to which the permit is subject;
- (e) that the public place is no longer a suitable place to be the subject of a permit under this Ordinance;
- (f) that the object is not serving a purpose beneficial to the interests of the public;
- (g) that the object has resulted in, whether directly or indirectly, the interests of a person carrying on business in the vicinity of the place being adversely affected.

“ 15G. (1) Application may be made to the Tribunal for a review of a decision of the Minister or his delegate— Review of decisions of Minister.

- (a) refusing to grant a permit;
- (b) cancelling a permit; or
- (c) imposing a condition subject to which a permit is granted.

“(2) For the purpose of reviewing a decision referred to in sub-section (1), the Tribunal shall be constituted by a presidential member alone.

“(3) In this section—

‘presidential member’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

‘Tribunal’ means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975*.

Rights of
holder of
permit.

“15H. (1) For the purpose of ensuring that an object to which a permit relates is used for the purpose specified in the permit, the holder of the permit may determine the persons who may make use of the object and any equipment or services provided in connexion with the object.

“(2) Nothing in sub-section (1) or in any other provision of this Ordinance 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.

Term of
permit.

“15J. A permit, unless sooner surrendered or cancelled, remains in force for such period, being a period not exceeding 12 months, as is specified in the permit.

Renewal of
permit.

“15K. (1) The Minister shall—

(a) on an application for the renewal of a permit made before or after the expiration of the term of the permit; and

(b) on payment of the prescribed fee,

subject to sub-section (3), renew the permit by issuing to the applicant a renewal of the permit.

“(2) Where the Minister renews a permit—

(a) the permit as renewed continues in force for such period, being a period not exceeding 12 months, as is specified in the renewal; and

(b) that period commences at the expiration of the period during which, but for its renewal, the permit would have been in force.

“(3) The Minister shall not renew a permit where the object to which the permit related has been removed under sub-section 15N (1).

Loss or
destruction
of permit.

“15L. If the Minister is satisfied that a permit has been lost, defaced or destroyed, he may issue to the holder of the permit a certified copy of the permit and that copy is, for the purposes of this Ordinance, of the same effect as the permit.

Notice to
remove
object.

“15M. (1) Where a permit expires or is surrendered or cancelled, the Minister shall, as soon as possible after the expiry, surrender or cancellation of the permit, as the case may be, if the object to which the permit related is still in, over or across the public place to which the permit related, by notice in writing given to the person who

held the permit, require that person, within such period as is specified in the notice, being a period of not less than 14 days after the notice is given, to remove the object from the public place.

“(2) Where a notice is given under sub-section (1) following the expiry of a permit and the permit is subsequently renewed under sub-section 15K (1), the notice ceases to have effect.

“15N. (1) Where a person fails to comply with a notice given to him under sub-section 15M (1), the Minister shall cause the object to which the notice relates to be removed and placed in storage.

Removal of
objects
by the Com-
monwealth.

“(2) Where a notice is given to a person under sub-section 15M (1) and the object to which the notice relates is removed under sub-section (1), the Minister shall give to the person a further notice stating—

- (a) the place in which the object is stored;
- (b) that the object will be delivered to the person at the place in which it is being stored if, within 28 days after the notice is given, the person pays to the Commonwealth—
 - (i) the amount specified in the notice in respect of the costs and expenses incurred or to be incurred by the Commonwealth in making good any damage caused to the public place by the removal of the object;
 - (ii) the amount specified in the notice in respect of the costs and expenses incurred by the Commonwealth in removing the object; and
 - (iii) an amount in respect of the costs and expenses of storage of the object, being an amount calculated in accordance with such rate as is specified in the notice; and
- (c) that, if, within the time specified in paragraph (b), the amounts referred to in that paragraph are not paid and the object removed from the place in which it is being stored—
 - (i) the ownership of the object shall be deemed, for all purposes, to vest in the Commonwealth; and
 - (ii) the object may be disposed of in such manner as the Minister directs.

“(3) In relation to a notice given under sub-section (2)—

- (a) the amount to be specified in the notice for the purpose of sub-paragraph (2)(b)(i) is the amount of the reasonable costs and expenses incurred or to be incurred by the Commonwealth in making good any damage caused to the public place by the removal of the object;
- (b) the amount to be specified in the notice for the purpose of sub-paragraph (2)(b)(ii) is the amount of the reasonable costs and expenses incurred by the Commonwealth in removing the object; and
- (c) the rate to be specified in the notice for the purpose of sub-paragraph (2)(b)(iii) is the rate necessary to cover the reasonable costs and expenses of storage of the object.

Disposal of
objects by
the Com-
monwealth.

“ 15P. (1) Where a person to whom a notice is given under sub-section 15N (2) does not, within 28 days after the notice is given to him—

(a) pay to the Commonwealth the amounts referred to in the notice; and

(b) remove the object to which the notice relates from the place in which it is being stored,

the ownership of the object shall be deemed, for all purposes, to vest in the Commonwealth and the object may be disposed of in such manner as the Minister directs.

“ (2) Where, in pursuance of sub-section (1), an object is sold by the Commonwealth, the proceeds of the sale shall be applied—

(a) in repaying to the Commonwealth—

(i) the amounts specified, for the purposes of sub-paragraphs 15N (2) (b) (i) and (ii), in the notice given under sub-section 15N (2) in respect of the object;

(ii) the amount of the costs and expenses incurred by the Commonwealth in connexion with the storage of the object, being an amount calculated in accordance with the rate specified, for the purpose of sub-paragraph 15N (2) (b) (iii), in that notice; and

(iii) the amount of the reasonable costs and expenses incurred by the Commonwealth in connexion with the sale of the object; and

(b) in payment of the balance, if any, to the person to whom the notices under sub-sections 15M (1) and 15N (2) were given.

Manner of
giving
notices.

“ 15Q. A notice referred to in sub-section 15M (1) or sub-section 15N (2) may be given by post.

Change of
address.

“ 15R. (1) Where the name or address of the holder of a permit is changed, the holder shall forthwith furnish to the Minister notice in writing of the change and forward the permit to the Minister.

Penalty: \$20.

“ (2) The Minister shall, as soon as practicable after receipt of the permit, enter the particulars of the change on the permit and return it to the holder.”