



Australian Capital Territory

# Public Unleased Land Act 2013

A2013-3

**Republication No 6**

**Effective: 2 July 2015 – 13 October 2015**

Republication date: 2 July 2015

Last amendment made by [A2015-19](#)  
(republication for expiry of transitional provisions (pt 20))

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Public Unleased Land Act 2013* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 July 2015. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 2 July 2015.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Public Unleased Land Act 2013

## Contents

---

|                     | Page  |
|---------------------|---|
| <b>Part 1</b>       | <b>Preliminary</b>                                      |
| 1                   | Name of Act 2   |
| 3                   | Dictionary 2  |
| 4                   | Notes 2   |
| 5                   | Offences against Act—application of Criminal Code etc 3 |
| 6                   | Object of Act 3   |
| 7                   | Application of Act to Territory 3                       |
| 8                   | Meaning of <i>public unleased land</i> 4                |
| 9                   | Meaning of <i>public road</i> 4                         |
| <b>Part 2</b>       | <b>Managing and protecting public unleased land</b>     |
| <b>Division 2.1</b> | <b>Public roads</b>                                     |
| 10                  | Director-general may fix or change public road levels 5 |

## Contents

---

|  | Page |
|--|------|
| 11 Director-general may temporarily close public roads                     | 6    |
| 12 Approval to use closed road   | 6    |
| 13 Offence—use closed road without approval                                | 7    |
| 14 Director-general may make temporary public roads                        | 7    |
| <b>Division 2.2 Drainage affecting public unleased land</b>                |      |
| 15 Directions to construct surface water drains                            | 8    |
| 16 Offence—fail to comply with drainage direction                          | 9    |
| 17 Construction of drains by Territory                                     | 9    |
| <b>Division 2.3 Work on public unleased land</b>                           |      |
| 18 Meaning of <i>work</i> on public unleased land                          | 10   |
| 19 Approval to carry out work on public unleased land                      | 10   |
| 20 Offence—carry out work on public unleased land without approval         | 12   |
| <b>Division 2.4 Damage to public unleased land</b>                         |      |
| 21 Directions to repair damage to public unleased land                     | 13   |
| 22 Offence—fail to comply with repair damage direction                     | 14   |
| 23 Repair of damage by Territory   | 14   |
| <b>Division 2.5 Signs on public unleased land</b>                          |      |
| 24 Meaning of <i>sign</i> on public unleased land                          | 15   |
| 25 Approval to place sign on public unleased land                          | 15   |
| 26 Offence—place fixed sign on public unleased land without approval       | 16   |
| 27 Movable signs code of practice  | 17   |
| 28 Offence—fail to comply with code of practice                            | 17   |
| 29 Territory indemnified regarding movable signs                           | 18   |
| <b>Division 2.6 Trees and other plants affecting public unleased land</b>  |      |
| 30 Definitions—div 2.6   | 18   |
| 31 Direction to prune tree etc overhanging public unleased land            | 19   |
| 32 Offence—fail to comply with plant pruning direction                     | 20   |
| 33 Pruning of tree etc by Territory  | 20   |
| 34 Direction to remove tree etc endangering public on public unleased land | 21   |
| 35 Offence—fail to comply with plant removal direction                     | 22   |
| 36 Removal of tree etc by Territory  | 22   |
| <b>Division 2.7 Graffiti visible from public unleased land</b>             |      |
| 37 Meaning of <i>occupier</i> of leased territory land—div 2.7             | 23   |

|   | Page |
|---|------|
| 38 Graffiti removal from property on leased territory land                      | 23   |
| 39 Graffiti removal—liability of the Territory                                  | 24   |
| <b>Part 3 Public unleased land permits</b>                                      |      |
| <b>Division 3.1 Important concepts</b>  |      |
| 40 What is a <i>public unleased land permit</i> ?                               | 25   |
| 41 When does a person <i>use</i> public unleased land?—pt 3                     | 25   |
| 42 Who is an <i>influential person</i> for a corporation?—pt 3                  | 26   |
| <b>Division 3.2 Public unleased land permits—offences</b>                       |      |
| 43 Offence—use public unleased land without permit                              | 27   |
| 44 Offence—fail to comply with condition of permit                              | 28   |
| <b>Division 3.3 Public unleased land permits—application</b>                    |      |
| 45 Public unleased land permit—application                                      | 29   |
| <b>Division 3.4 Public unleased land permits—suitability of people</b>          |      |
| 46 Who is a <i>suitable person</i> to hold a public unleased land permit?       | 30   |
| 47 What is <i>suitability information</i> about a person?                       | 31   |
| 48 Suitability of people—further information about people                       | 32   |
| <b>Division 3.5 Public unleased land permits—suitability of activities</b>      |      |
| 49 What is a <i>suitable activity</i> for a public unleased land permit?        | 32   |
| 50 What is <i>suitability information</i> about an activity?                    | 33   |
| 51 Suitability of activities—further information about activity                 | 35   |
| 52 Suitability of activities—other approvals                                    | 35   |
| 52A Suitability of activities—consultation with conservator                     | 36   |
| 53 Suitability of activities—public consultation                                | 36   |
| 54 Suitability of activities—public consultation submissions                    | 37   |
| 55 Suitability of activities—risk management plan                               | 38   |
| 56 Suitability of activities—inspection of object                               | 39   |
| <b>Division 3.6 Public unleased land permits—decision</b>                       |      |
| 57 Public unleased land permit—decision on application                          | 39   |
| 58 Public unleased land permit—form   | 41   |
| 59 Public unleased land permit—term   | 42   |
| <b>Division 3.7 Public unleased land permits—financial assurance conditions</b> |      |
| 60 Meaning of <i>financial assurance condition</i>                              | 42   |

## Contents

---

|                      | Page   |
|----------------------|--|
| 61                   | Financial assurance condition—imposition 43                                  |
| 62                   | Financial assurance condition—show cause 44                                  |
| 63                   | Financial assurance condition—permit cancellation 45                         |
| 64                   | Financial assurance condition—claim or realisation 45                        |
| 65                   | Financial assurance condition—notice before claim or realisation 46          |
| 66                   | Financial assurance condition—recovery of extra costs 47                     |
| 67                   | Financial assurance condition—money held by Territory 48                     |
| <b>Division 3.8</b>  | <b>Public unleased land permits—amendment, transfer, renewal, etc</b>        |
| 68                   | Public unleased land permit—amendment initiated by director-general 49       |
| 69                   | Public unleased land permit—application to amend permit 50                   |
| 70                   | Public unleased land permit—decision on application to amend permit 50       |
| 71                   | Public unleased land permit—application to transfer permit 52                |
| 72                   | Public unleased land permit—decision on application to transfer permit 53    |
| 73                   | Public unleased land permit—application for renewal of permit 54             |
| 74                   | Public unleased land permit—decision on application for renewal of permit 55 |
| 75                   | Public unleased land permit—replacing when lost, stolen or destroyed 56      |
| 76                   | Public unleased land permit—surrender 57                                     |
| 77                   | Offence—fail to notify change of name or address 57                          |
| 78                   | Public unleased land permit—director-general to change name and address 58   |
| <b>Division 3.9</b>  | <b>Public unleased land permits—regulatory action</b>                        |
| 79                   | Public unleased land permit—grounds for regulatory action 58                 |
| 80                   | Public unleased land permit—regulatory action 59                             |
| 81                   | Public unleased land permit—taking regulatory action 59                      |
| 82                   | Public unleased land permit—immediate suspension 60                          |
| 83                   | Public unleased land permit—effect of suspension 61                          |
| 84                   | Offence—fail to return amended, suspended or cancelled permits 62            |
| 85                   | Action by director-general in relation to amended or suspended permit 62     |
| <b>Division 3.10</b> | <b>Public unleased land permit register</b>                                  |
| 86                   | Public unleased land permit register 63                                      |
| 87                   | Correction and keeping up-to-date register 63                                |

|                          |   | Page |
|--------------------------|---|------|
| <b>Part 4</b>            | <b>Enforcement</b>  |      |
| <b>Division 4.1</b>      | <b>General</b>  |      |
| 88                       | Definitions—pt 4  | 64   |
| <b>Division 4.2</b>      | <b>Authorised people</b>  |      |
| 89                       | Authorised people   | 64   |
| 90                       | Identity cards  | 65   |
| 91                       | Power not to be exercised before identity card shown                                  | 66   |
| <b>Division 4.3</b>      | <b>Directions etc</b>   |      |
| <b>Subdivision 4.3.1</b> | <b>General directions</b>   |      |
| 92                       | Direction to give name and address  | 66   |
| 93                       | Offence—fail to comply with direction to give name and address                        | 67   |
| 94                       | Direction to produce approval, permit or insurance policy                             | 68   |
| 95                       | Offence—fail to comply with direction to produce approval, permit or insurance policy | 69   |
| 96                       | Direction to leave permitted public unleased land                                     | 69   |
| 97                       | Offence—fail to comply with direction to leave permitted public unleased land         | 70   |
| 98                       | Direction to remove objects from public unleased land                                 | 71   |
| 99                       | Offence—fail to comply with removal direction   | 72   |
| <b>Subdivision 4.3.2</b> | <b>Urgent action</b>  |      |
| 100                      | Director-general's directions   | 73   |
| 101                      | Offence—fail to comply with director-general's direction                              | 74   |
| 102                      | Emergency closure of permitted place  | 75   |
| 103                      | Emergency closure notice  | 75   |
| 104                      | Offence—fail to comply with emergency closure order                                   | 76   |
| <b>Division 4.4</b>      | <b>Removal and disposal of objects on public unleased land by Territory</b>           |      |
| 105                      | Removal of objects by Territory   | 76   |
| 106                      | Disposal of objects by Territory  | 77   |
| <b>Division 4.5</b>      | <b>Powers of authorised people</b>  |      |
| 107                      | Power to enter premises   | 78   |
| 108                      | Production of identity card   | 79   |
| 109                      | Consent to entry  | 79   |
| 110                      | General powers on entry to premises   | 80   |

## Contents

---

|   | Page |
|---|------|
| 111 Power to seize things   | 81   |
| <b>Division 4.6 Search warrants</b>   |      |
| 112 Warrants generally  | 82   |
| 113 Warrants—application made other than in person                                    | 83   |
| 114 Search warrants—announcement before entry   | 85   |
| 115 Details of search warrant to be given to occupier etc                             | 86   |
| 116 Occupier entitled to be present during search etc                                 | 86   |
| <b>Division 4.7 Return and forfeiture of things seized</b>                            |      |
| 117 Receipt for things seized   | 86   |
| 118 Moving things to another place for examination or processing under search warrant | 87   |
| 119 Access to things seized   | 88   |
| 120 Return of things seized   | 88   |
| 121 Forfeiture of seized things   | 89   |
| 122 Power to destroy unsafe things  | 90   |
| 123 Application for order disallowing seizure   | 91   |
| 124 Order for return of seized thing  | 91   |
| <b>Division 4.8 Enforcement—miscellaneous</b>   |      |
| 125 Damage etc to be minimised  | 92   |
| 126 Compensation for exercise of enforcement powers                                   | 92   |
| <b>Part 5 Notification and review of decisions</b>                                    |      |
| 127 What is a <i>reviewable decision</i> ?—pt 5                                       | 94   |
| 128 Reviewable decision notices   | 94   |
| 129 Applications for review   | 94   |
| <b>Part 6 Miscellaneous</b>   |      |
| 130 Determination of fees etc   | 95   |
| 131 Approved forms  | 95   |
| 132 Regulation-making power   | 95   |
| <b>Schedule 1 Reviewable decisions</b>  | 96   |



|                   |   |
|-------------------|---|
| <b>Dictionary</b> | Page<br>98  |
| <b>Endnotes</b>   |   |
| 1                 | About the endnotes 103                            |
| 2                 | Abbreviation key 103                              |
| 3                 | Legislation history 104                           |
| 4                 | Amendment history 105                             |
| 5                 | Earlier republications 107                        |
| 6                 | Expired transitional or validating provisions 107 |





Australian Capital Territory

# Public Unleased Land Act 2013

---

An Act about public unleased land, and for other purposes

---

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Public Unleased Land Act 2013*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*registered operator*—see the [Road Transport \(Vehicle Registration\) Act 1999](#), dictionary.' means that the term 'registered operator' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Object of Act

The main objects of this Act are to—

- (a) protect the amenity and natural value of public unleased land; and
- (b) facilitate the use of public unleased land.

## 7 Application of Act to Territory

- (1) The following sections do not bind the Territory:
  - (a) section 16 (Offence—fail to comply with drainage direction);
  - (b) section 20 (Offence—carry out work on public unleased land without approval);
  - (c) section 22 (Offence—fail to comply with repair damage direction).
- (2) This section has effect despite the [Legislation Act](#), section 121 (Binding effect of Acts).

**8 Meaning of *public unleased land***

In this Act:

*public unleased land* means unleased territory land that—

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

**9 Meaning of *public road***

In this Act:

*public road* means any street, road, lane, thoroughfare, footpath, or place that is—

- (a) territory land; and
- (b) open to, or used by, the public.

## **Part 2**                      **Managing and protecting public unleased land**

### **Division 2.1**              **Public roads**

#### **10**                      **Director-general may fix or change public road levels**

- (1) The director-general may fix or change the level of a public road.
- (2) However, before deciding whether to fix or change a level, the director-general must—
  - (a) publish twice in a daily newspaper, at least 30 days before the level is to be fixed or changed, a notice about the proposal to fix or change the level; and
  - (b) give anyone interested in the proposal an opportunity to be heard about the proposal.
- (3) The notice must state—
  - (a) the name and location of the road; and
  - (b) where plans of the proposal may be inspected; and
  - (c) where and when anyone interested in the proposal may be heard.
- (4) The director-general must hear anyone interested in the proposal at the time and place mentioned in the notice.
- (5) In deciding whether to fix or change the level, the director-general must consider submissions made at the hearing.

**11 Director-general may temporarily close public roads**

- (1) The director-general may temporarily close a public road (a *closed road*).
- (2) However, before closing a public road, the director-general must—
  - (a) publish in a daily newspaper, at least 7 days before the road is to be closed, a notice about the proposal to close the road; and
  - (b) display a notice about the proposal to close the road in a conspicuous place at the road.
- (3) Subsection (2) does not apply in urgent circumstances.

**12 Approval to use closed road**

- (1) A person may apply to the director-general for approval (a *closed road approval*) to use a closed road.

*Note 1* If a form is approved under s 131 for this provision, the form must be used.

*Note 2* A fee may be determined under s 130 for this provision.

- (2) On receiving an application, the director-general must—
  - (a) give a copy of the application to each entity the director-general considers should be consulted about the application; and
  - (b) tell each entity that they may give a written submission to the director-general, not later than 15 working days after receiving the copy of the application, about—
    - (i) why the closed road should not be used; or
    - (ii) how the closed road should be used.
- (3) In deciding whether to issue an approval, the director-general must consider—
  - (a) whether the use would be likely to—



- (i) cause undue risk to people or property; or
  - (ii) damage the road; and
- (b) any submissions received under subsection (2).
- (4) The director-general may issue an approval only if reasonably satisfied that use of the road in accordance with the approval would not be likely to cause unacceptable risk to people, property or the road.
- (5) An approval may be subject to any condition that the director-general reasonably believes is necessary for the management or protection of the road.

**13 Offence—use closed road without approval**

- (1) A person commits an offence if the person—
  - (a) uses a closed road; and
  - (b) does not hold a closed road approval authorising the use of the closed road.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

**14 Director-general may make temporary public roads**

- (1) This section applies if the director-general—
  - (a) temporarily closes a public road under section 11 (Director-general may temporarily close public roads); and
  - (b) considers that it is necessary to make a temporary road for use while the road is closed.
- (2) The director-general may make a temporary public road.

- (3) However, if the land for the temporary public road is fenced, the director-general must tell the occupier or owner of the land about the temporary public road at least 24 hours before making the temporary public road.
- (4) Subsection (3) does not apply in urgent circumstances.
- (5) The Territory 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 public road.

## **Division 2.2 Drainage affecting public unleased land**

### **15 Directions to construct surface water drains**

- (1) This section applies if surface water from land—
  - (a) overflows into public unleased land; and
  - (b) damages the public unleased land.
- (2) The director-general may direct (a *drainage direction*) the land owner to do 1 or more of the following:
  - (a) repair the damage;
  - (b) construct stated drains.
- (3) A drainage direction must be in writing and state—
  - (a) if damage is to be repaired—
    - (i) the public unleased land; and
    - (ii) the damage to be repaired; and
  - (b) if a drain is to be constructed—
    - (i) the location of the drain; and
    - (ii) the size of the drain; and

(iii) that the owner must maintain the drain in good condition;  
and

(c) when the direction must be complied with, being a day at least  
1 month after the direction is given to the owner.

*Note* Power to make the direction includes power to amend or repeal the  
direction (see [Legislation Act](#), s 46).

## **16 Offence—fail to comply with drainage direction**

(1) A person commits an offence if the person—

- (a) is subject to a drainage direction; and
- (b) fails to comply with the direction.

Maximum penalty: 5 penalty units.

(2) An offence against this section is a strict liability offence.

## **17 Construction of drains by Territory**

(1) This section applies if a land owner—

- (a) is subject to a drainage direction; and
- (b) fails to comply with the direction.

(2) The director-general may—

- (a) if a drain has not been constructed or maintained as directed—
  - (i) enter onto the land mentioned in the drainage direction,  
with the assistance that the director-general considers  
necessary; and
  - (ii) construct or maintain the drains mentioned in the drainage  
direction; and
- (iii) recover the reasonable costs of the construction or  
maintenance from the land owner; and

(b) if damage to public unleased land has not been repaired as directed—

(i) repair the damage; and

(ii) recover the reasonable costs of repairing the damage from the land owner.

*Note 1* Powers of entry are further dealt with in div 4.5.

*Note 2* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## Division 2.3 Work on public unleased land

### 18 Meaning of *work* on public unleased land

In this Act:

*work*, on public unleased land, includes—

(a) any interference with Territory property on the public unleased land; and

(b) construction work carried out on the public unleased land.

### 19 Approval to carry out work on public unleased land

(1) A person may apply to the director-general for approval (a *work approval*) to carry out work on public unleased land.

*Note 1* If a form is approved under s 131 for this provision, the form must be used.

*Note 2* A fee may be determined under s 130 for this provision.

(2) On receiving an application, the director-general must—

(a) give a copy of the application to each entity the director-general considers should be consulted about the application; and

- (b) tell each entity that they may give a written submission to the director-general, not later than 15 working days after receiving the copy of the application, about—
  - (i) why the work should not be carried out; or
  - (ii) how the work should be carried out.
- (3) If the public unleased land is a reserve, the director-general must consult the conservator about the application.
- (4) In deciding whether to issue an approval, the director-general must consider—
  - (a) whether the work would be likely to—
    - (i) cause undue disturbance, inconvenience or offence to people lawfully on or near the public unleased land; or
    - (ii) cause undue risk to people or property; or
    - (iii) damage the public unleased land; and
  - (b) any submissions received under subsection (2).
- (5) The director-general may issue an approval only if reasonably satisfied that carrying out the work in accordance with the approval would not be likely to—
  - (a) unacceptably affect people lawfully on or near the public unleased land; and
  - (b) cause unacceptable risk to people, property or the public unleased land.
- (6) An approval may be subject to any condition that the director-general reasonably believes is necessary to—
  - (a) eliminate an effect or risk mentioned in subsection (5); or

- (b) if the effect or risk cannot be eliminated—minimise the effect or risk.

**Examples—conditions**

- 1 that the work site be lit from sunset to sunrise
- 2 that the work site be fenced

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**20 Offence—carry out work on public unleased land without approval**

- (1) A person commits an offence if the person—
- (a) carries out work on public unleased land; and
  - (b) does not hold a work approval authorising the carrying out of the work on the public unleased land.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

## **Division 2.4                      Damage to public unleased land**

### **21                      Directions to repair damage to public unleased land**

(1) This section applies if—

(a) a person causes damage to—

(i) public unleased land; or

(ii) Territory property on public unleased land; and

**Example—Territory property on public unleased land**

1 boundary mark

2 public notice

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(b) the damage is not authorised under—

(i) an approval under this Act; or

**Examples—approvals that may authorise damage**

1 closed road approval

2 work approval

(ii) a public unleased land permit; or

(iii) a nature conservation licence under the [Nature Conservation Act 2014](#), section 262 (What is a *nature conservation licence*?).

(2) The director-general may direct (a *repair damage direction*) the person to repair the damage.

(3) A repair damage direction must be in writing and state—

(a) the public unleased land and Territory property (if any); and

(b) the damage to be repaired; and

- (c) when the direction must be complied with, being a day at least 1 month after the direction is given to the person.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

## **22 Offence—fail to comply with repair damage direction**

- (1) A person commits an offence if the person—
- (a) is subject to a repair damage direction; and
  - (b) fails to comply with the direction.
- Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.

## **23 Repair of damage by Territory**

- (1) This section applies if a person—
- (a) is subject to a repair damage direction; and
  - (b) fails to comply with the direction.
- (2) The director-general may—
- (a) repair the damage; and
  - (b) recover the reasonable costs of repairing the damage from the person.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).



## **Division 2.5                      Signs on public unleased land**

### **24                      Meaning of *sign* on public unleased land**

In this Act—

*sign*, on public unleased land, includes—

- (a) an advertisement; and
- (b) a public notice.

### **25                      Approval to place sign on public unleased land**

- (1) A person may apply to the director-general for approval (a *sign approval*) to place a sign on public unleased land.

*Note 1*    If a form is approved under s 131 for this provision, the form must be used.

*Note 2*    A fee may be determined under s 130 for this provision.

- (2) On receiving an application, the director-general must—
  - (a) give a copy of the application to each entity the director-general considers should be consulted about the application; and
  - (b) tell each entity that they may give a written submission to the director-general, not later than 15 working days after receiving the copy of the application, about—
    - (i) why the sign should not be placed on the public unleased land; or
    - (ii) how the sign should be placed on the public unleased land.

- (3) In deciding whether to issue an approval, the director-general must consider—
  - (a) whether the placement of the sign would be likely to—
    - (i) cause undue disturbance, inconvenience or offence to people lawfully on or near the public unleased land; or
    - (ii) cause undue risk to people or property; or
    - (iii) damage the public unleased land; and
  - (b) any submissions received under subsection (2).
- (4) The director-general may issue an approval only if satisfied that placing the sign in accordance with the approval would not be likely to—
  - (a) unacceptably affect people lawfully on or near the public unleased land; and
  - (b) cause unacceptable risk to people, property or the public unleased land.
- (5) If the sign is a movable sign, the approval is subject to the condition that the placement and keeping of the sign must comply with the movable signs code of practice.
- (6) An approval may be subject to any other condition that the director-general reasonably believes is necessary for the management or protection of the public unleased land.

**26 Offence—place fixed sign on public unleased land without approval**

- (1) A person commits an offence if the person—
  - (a) places a fixed sign on public unleased land; and

- (b) does not hold a sign approval authorising the placing of the sign on the public unleased land.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

## **27 Movable signs code of practice**

- (1) The Minister may approve a code of practice about movable signs on public unleased land (a *movable signs code of practice*).
- (2) A movable signs code of practice may include provisions about 1 or more of the following matters:
  - (a) the construction of movable signs on public unleased land;
  - (b) the size of movable signs on public unleased land;
  - (c) the location of movable signs on public unleased land;
  - (d) the words or images that may be displayed on movable signs on public unleased land;
  - (e) the number of movable signs that may be placed on public unleased land;
  - (f) the kind of insurance policy that a person placing a movable sign on public unleased land must hold.
- (3) An approved code of practice is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## **28 Offence—fail to comply with code of practice**

- (1) A person commits an offence if—
  - (a) the person places a movable sign on public unleased land; and

- (b) either—
- (i) the person fails to comply with the movable signs code of practice; or
  - (ii) the sign does not comply with the movable signs code of practice.

Maximum penalty:

- (a) if the failure relates to insurance—50 penalty units; or
  - (b) if the failure does not relate to insurance—10 penalty units.
- (2) An offence against this section is a strict liability offence.

## **29 Territory indemnified regarding movable signs**

A person who places a movable sign on public unleased land is liable to indemnify the Territory for any liability the Territory incurs as a result of the movable sign being on the public unleased land.

## **Division 2.6 Trees and other plants affecting public unleased land**

### **30 Definitions—div 2.6**

In this division:

*damage* a protected tree—see the [Tree Protection Act 2005](#), section 12.

*registered tree*—see the [Tree Protection Act 2005](#), section 9.

*tree protection approval* means an approval under the [Tree Protection Act 2005](#)—

- (a) section 25 (Decision on approval application); or
- (b) section 29 (Approval in urgent circumstances or for minor works).

**31 Direction to prune tree etc overhanging public unleased land**

- (1) This section applies if the director-general believes on reasonable grounds that a tree or other plant is—
  - (a) overhanging public unleased land; and
  - (b) likely to obstruct or inconvenience anyone on the public unleased land.
- (2) The director-general may direct (a *plant pruning direction*) the occupier of the land on which the tree or other plant is growing to prune the tree or other plant.
- (3) However, if the tree or other plant is a registered tree and the pruning would or may damage the tree, a tree protection approval for the pruning must be in force before the director-general issues the plant pruning direction.

*Note* A tree protection approval is not needed for regulated trees because they are exempted under the [Tree Protection Act 2005](#), s 19 (1) (d) (iv).

- (4) The plant pruning direction must—
  - (a) be in writing; and
  - (b) state the public unleased land; and
  - (c) identify the tree or other plant; and
  - (d) state how the tree or plant must be pruned; and
  - (e) state when the direction must be complied with, being a day at least 7 days after the direction is given to the occupier; and
  - (f) if subsection (3) applies to the tree or other plant—be accompanied by the tree protection approval.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

**32 Offence—fail to comply with plant pruning direction**

- (1) A person commits an offence if the person—
- (a) is subject to a plant pruning direction; and
  - (b) fails to comply with the direction.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

**33 Pruning of tree etc by Territory**

- (1) This section applies if an occupier—
- (a) is subject to a plant pruning direction; and
  - (b) fails to comply with the direction.

- (2) The director-general may—
- (a) enter onto the land mentioned in the plant pruning direction, with the assistance that the director-general considers necessary; and

*Note* Powers of entry are further dealt with in div 4.5.

- (b) prune the tree or other plant as mentioned in the plant pruning direction; and
- (c) recover the reasonable costs of the pruning from the occupier.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act, s 177](#)).

**34 Direction to remove tree etc endangering public on public unleased land**

- (1) This section applies if the director-general believes on reasonable grounds that a tree or other plant endangers the safety of anyone on public unleased land.

**Example—tree or plant endangering safety of person on public unleased land**

tree obstructing vision of drivers on public road

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The director-general may direct (a *plant removal direction*) the occupier of the land on which the tree or other plant is growing to immediately remove the tree or plant.
- (3) However, if the tree or other plant is a registered tree, a tree protection approval for the removal must be in force before the director-general issues the plant removal direction.

*Note* A tree protection approval is not needed for regulated trees because they are exempted under the *Tree Protection Act 2005*, s 19 (1) (d) (iv).

- (4) The plant removal direction must—
- (a) be in writing; and
  - (b) state the public unleased land; and
  - (c) identify the tree or other plant; and
  - (d) state when the direction must be complied with, being a day at least 5 days after the direction is given to the occupier; and
  - (e) if subsection (3) applies to the tree or other plant—be accompanied by the tree protection approval.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

**35 Offence—fail to comply with plant removal direction**

- (1) A person commits an offence if the person—
  - (a) is subject to a plant removal direction; and
  - (b) fails to comply with the direction.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

**36 Removal of tree etc by Territory**

- (1) This section applies if an occupier—
  - (a) is subject to a plant removal direction; and
  - (b) fails to comply with the direction.
- (2) The director-general may—
  - (a) enter onto the land mentioned in the plant removal direction, with the assistance that the director-general considers necessary; and
  - (b) remove the tree or other plant; and
  - (c) recover the reasonable costs of the pruning from the occupier.

*Note 1* Powers of entry are further dealt with in div 4.5.

*Note 2* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).



## **Division 2.7                      Graffiti visible from public unleased land**

### **37                      Meaning of *occupier* of leased territory land—div 2.7**

In this division:

*occupier*, of leased territory land, includes—

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

### **38                      Graffiti removal from property on leased territory land**

- (1) This section applies to graffiti on property on leased territory land if the graffiti is visible from public unleased land.
- (2) An authorised person may remove the graffiti with the consent of the occupier of the land.
- (3) An authorised person may remove the graffiti without the consent of the occupier of the land if an authorised person has, immediately before the graffiti removal work is to be carried out, taken reasonable steps to tell the occupier that the work is to be carried out.
- (4) However, graffiti removal work under subsection (3) must be carried out only from public unleased land.
- (5) After graffiti removal work under subsection (2) or (3) has been carried out, an authorised person must tell the occupier of the land, in writing—
  - (a) that the work has been carried out; and
  - (b) about the effect of section 39.

### **39 Graffiti removal—liability of the Territory**

- (1) The cost of graffiti removal work under section 38 is payable by the Territory.
- (2) The Territory is liable for any damage caused to the property in carrying out graffiti removal work, other than any minor damage that is incidental to the removal of the graffiti.

**Examples—minor incidental damage**

- 1 minor discoloration of the surface from which the graffiti is removed
- 2 minor variations in the colour and application of paintwork

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) The Territory is not liable for any failure to completely remove any graffiti.
- (4) To remove any doubt, the Territory is not required to—
  - (a) carry out any graffiti removal work; or
  - (b) restore any property to its former state before graffiti was applied to it.

## **Part 3**                      **Public unleased land permits**

### **Division 3.1**                **Important concepts**

#### **40**                **What is a *public unleased land permit*?**

In this Act:

*public unleased land permit* means a permit that authorises the permit-holder to exclusively use stated public unleased land (the *permitted public unleased land*)—

- (a) at a stated time (the *permitted time*); and
- (b) for a stated activity (the *permitted activity*).

#### **41**                **When does a person use public unleased land?—pt 3**

(1) In this part:

*use*, public unleased land—a person *uses* public unleased land if the person carries on an activity on the public unleased land in a way that excludes some or all members of the public from the place.

**Examples—using public unleased land**

- 1 placing tables and chairs on the footpath outside a cafe
- 2 placing a construction skip on a footpath
- 3 placing a charity bin on a footpath
- 4 holding markets on unleased land
- 5 holding a concert in a park
- 6 holding a wedding in a park
- 7 parking a car in a park

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) However, the Minister may declare that an activity on public unleased land is, or is not, *use* of the public unleased land for this part.

**Example**

An activity that excludes some members of the public from the land may be declared to not be ‘use’ if carried on in certain circumstances or at a particular time.

- (3) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## 42 Who is an *influential person* for a corporation?—pt 3

- (1) In this part:

*influential person*, for a corporation, means any of the following:

- (a) an executive officer of the corporation;
- (b) a person who may exercise a relevant power in relation to the corporation;
- (c) a related corporation;
- (d) an executive officer of a related corporation.

- (2) In this section:

*related corporation* means a related body corporate under the [Corporations Act](#).

*relevant power*, for a corporation, means a power—

- (a) to take part in a directorial, managerial or executive decision for the corporation; or
- (b) to elect or appoint a person as an executive officer in the corporation; or
- (c) to exercise a significant influence in relation to the conduct of the corporation.



- (5) This section does not apply to a person carrying out an activity in a reserve if—
- (a) an activities declaration under the *Nature Conservation Act 2014* is in force for the reserve, providing that the activity may be carried out in the reserve if stated directions or requirements are complied with; and
  - (b) the person complies with the stated directions or requirements.
- (6) This section does not apply to a person who parks a vehicle on public unleased land if—
- (a) the person holds a licence under the *Hawkers Act 2003* to use the vehicle to sell goods or services in the public unleased land; and
  - (b) the person is carrying on the business of a hawker under that Act in accordance with the licence.

**44 Offence—fail to comply with condition of permit**

- (1) A person commits an offence if—
- (a) the person holds a public unleased land permit; and
  - (b) the permit is subject to a condition; and
  - (c) the person fails to comply with the condition.
- Maximum penalty:
- (a) if the condition is not a financial assurance condition—20 penalty units; or
  - (b) if the condition is a financial assurance condition—30 penalty units.
- (2) An offence against this section is a strict liability offence.



(B) the position of the activity on the public unleased land.

(3) In this section:

*outdoor eating or drinking place*—see the *Smoke-Free Public Places Act 2003*, section 9A (Meaning of *outdoor eating or drinking place*).

*Note 1* Giving false or misleading information is an offence against the *Criminal Code*, s 338.

*Note 2* If a form is approved under s 131 for this provision, the form must be used.

*Note 3* A fee may be determined under s 130 for this provision.

## Division 3.4 Public unleased land permits— suitability of people

### 46 Who is a *suitable person* to hold a public unleased land permit?

(1) In this Act:

*suitable person*, to hold a public unleased land permit, means a person who the director-general is satisfied is a suitable person to hold the permit.

(2) In deciding whether a person is a suitable person to hold a public unleased land permit, the director-general must consider each of the following:

- (a) suitability information about the person;
- (b) any information given to the director-general under section 48 (Suitability of people—further information about people).



## **47 What is *suitability information* about a person?**

In this Act:

*suitability information*, about a person, means information about the following:

- (a) any conviction of, or finding of guilt against, the person for an offence against 1 or more of the following:
  - (i) this Act;
  - (ii) a law of another jurisdiction corresponding, or substantially corresponding, to this Act;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (b) any proven noncompliance by the person with a legal obligation in relation to carrying on an activity on public unleased land;

**Example**

failing to comply with a direction to remove an object (see s 96)

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (c) any refusal of an application by the person for a licence, permit or other authority (however described) to carry on an activity on public unleased land;

**Example**

A person has had an application refused for a licence under the [Planning and Development Act 2007](#), s 303, to occupy or use an area of unleased land.

- (d) any other matter relevant to the person's ability to safely and responsibly carry on an activity on public unleased land.

**48 Suitability of people—further information about people**

- (1) This section applies if the director-general is making a decision about whether a person is a suitable person to hold a public unleased land permit.
- (2) The director-general may, by written notice given to the person (a *personal information notice*), require the person to give the director-general stated information about 1 or more of the following people, not later than a stated reasonable time:
  - (a) the person;
  - (b) if the person is a corporation—an influential person for the person.
- (3) The director-general need not decide whether a person is a suitable person to hold a public unleased land permit if—
  - (a) the director-general has given the person a personal information notice; and
  - (b) the person does not comply with the notice.

**Division 3.5 Public unleased land permits—  
suitability of activities**

**49 What is a *suitable activity* for a public unleased land permit?**

- (1) In this Act:

*suitable activity*, for a public unleased land permit, means an activity that the director-general is satisfied is suitable for the permit.
- (2) In deciding whether an activity is suitable for a public unleased land permit, the director-general must consider each of the following:
  - (a) suitability information about the activity;

- (b) the location plan given to the director-general with the application;
- (c) any information about the activity given to the director-general under section 51 (Suitability of activities—further information about activity);
- (d) any approval, licence, permit or other authority for the activity given to the director-general under section 52 (Suitability of activities—other approvals);
- (e) any submission about the activity received by the director-general under—
  - (i) section 53 (Suitability of activities—public consultation);  
or
  - (ii) section 54 (Suitability of activities—public consultation submissions);
- (f) any risk management plan given to the director-general under section 55 (Suitability of activities—risk management plan);
- (g) the results of any inspection of an object by the director-general under section 56 (Suitability of activities—inspection of object).

## **50 What is *suitability information* about an activity?**

In this Act:

***suitability information***, about an activity, means information about the following:

- (a) if the activity involves placing an object on public unleased land—the following information:
  - (i) the nature of the object;
  - (ii) the size of the object;
  - (iii) the intended use of the object;

- (iv) if the object is not to remain on the public unleased land at all times during the public unleased land permit—when the object will be on the public unleased land;
  - (v) any risks that the placement of the object may cause to the public, and how the risks are to be minimised;
  - (vi) if placement of the object requires construction work on the public unleased land—
    - (A) the nature of the work; and
    - (B) any risks that the construction work may cause to the public, and how the risks are to be minimised; and
  - (vii) any other matter relevant to the appropriateness of the object on the public unleased land;
- (b) if the activity involves holding an event on public unleased land—the following information:
- (i) the nature of the event;
  - (ii) the number of people expected to attend the event;
  - (iii) if the event is not to be held on the public unleased land at all times during the public unleased land permit—when the event will be held on the public unleased land;
  - (iv) any risks that the holding of the event may cause to the public, and how the risks are to be minimised;
  - (v) any other matter relevant to the appropriateness of holding the event on the public unleased land.

*Note* The director-general must also consider suitability information for an activity when deciding to amend or renew a public unleased land permit (see s 68, s 69 and s 74).

**51 Suitability of activities—further information about activity**

- (1) This section applies if the director-general is making a decision about whether an activity is a suitable activity for a public unleased land permit.
- (2) The director-general may, by written notice given to the applicant (an *activity information notice*), require the applicant to give the director-general stated information about the activity, not later than a stated reasonable time.
- (3) The director-general need not decide whether an activity is a suitable activity for a public unleased land permit if—
  - (a) the director-general has given the applicant an activity information notice; and
  - (b) the applicant does not comply with the notice.

**52 Suitability of activities—other approvals**

- (1) This section applies if—
  - (a) the director-general is making a decision about whether an activity is a suitable activity for a public unleased land permit; and
  - (b) carrying on the activity on the public unleased land in accordance with the permit would require an approval, licence, permit or other authority (however described) under another territory law or Commonwealth law.
- (2) The director-general may, by written notice given to the applicant (an *additional approval notice*), require the applicant to give the director-general a copy of the stated approval, licence, permit or other authority.
- (3) The director-general need not decide an application for a public unleased land permit if—

- (a) the director-general has given the applicant an additional approval notice; and
- (b) the applicant does not comply with the notice.

**52A Suitability of activities—consultation with conservator**

- (1) This section applies if—
  - (a) the director-general is making a decision about whether an activity is a suitable activity for a public unleased land permit; and
  - (b) the public unleased land is a reserve.
- (2) In making the decision, the director-general must consult the conservator.

**53 Suitability of activities—public consultation**

- (1) This section applies if the director-general is—
  - (a) making a decision about whether an activity is a suitable activity for a public unleased land permit; and
  - (b) satisfied that carrying on the activity on the public unleased land in accordance with the permit is likely to have significant impact on people lawfully at adjacent or nearby places.
- (2) The director-general may, by written notice given to the applicant (a *public consultation notice*), require the applicant to—
  - (a) display a sign about the application on the public unleased land; and
  - (b) publish a notice about the application in a daily newspaper.
- (3) The sign and notice must—
  - (a) state—
    - (i) the times for the public unleased land permit; and

- (ii) the activity for the public unleased land permit; and
  - (iii) that anyone may give a written submission to the director-general about how the use of the public unleased land in accordance with the proposed permit may have significant impact on someone lawfully at adjacent or nearby places; and
  - (iv) that submissions may be given to the director-general only during the 15 working days after the date of the sign or notice (the *public consultation period*); and
- (b) comply with the requirements prescribed by regulation.
- (4) A person who gives the director-general a submission about an application may, in writing, withdraw the submission at any time before the application is decided.
- (5) The director-general need not decide an application for a public unleased land permit if—
- (a) the director-general has given the applicant a public consultation notice; and
  - (b) the applicant does not comply with the notice.

## **54 Suitability of activities—public consultation submissions**

- (1) This section applies if the director-general—
- (a) receives a submission under section 53 (3); and
  - (b) proposes to decide that the activity is not a suitable activity for the public unleased land permit because of information contained in the submission.

*Note* The director-general may issue a public unleased land permit only if satisfied that the activity is a suitable activity for the public unleased land permit (see s 57).

- (2) The director-general must give the applicant written notice of the proposed decision (a *public consultation submission notice*).

- (3) The notice must—
- (a) include a copy of the submission; and
  - (b) state that—
    - (i) the applicant may give a written submission to the director-general showing cause why the activity should not be considered unsuitable for the public unleased land permit; and
    - (ii) the applicant's submission may be given to the director-general only during the 20 working days (the *show cause period*) after the date of the notice.

## **55 Suitability of activities—risk management plan**

- (1) This section applies if the director-general is—
- (a) making a decision about whether an activity is a suitable activity for a public unleased land permit; and
  - (b) satisfied that carrying on the activity on the public unleased land in accordance with the public unleased land permit is likely to cause undue risk to people or property.
- (2) The director-general may, by written notice given to the applicant (a *risk management plan notice*), require the applicant to prepare a risk management plan for the public unleased land permit.
- (3) The risk management plan must—
- (a) identify the risks to people and property; and
  - (b) detail the procedures, practices and arrangements for eliminating or minimising the risks.
- (4) The director-general need not decide an application for a public unleased land permit if—
- (a) the director-general has given the applicant a risk management plan notice; and



- (b) the applicant does not comply with the notice.

**56 Suitability of activities—inspection of object**

- (1) This section applies if—
  - (a) the director-general is making a decision about whether an activity is suitable for a public unleased land permit; and
  - (b) the activity involves placing an object on public unleased land.
- (2) The director-general may, by written notice given to the applicant (an *inspection notice*), require the applicant to allow the director-general to inspect the object within a stated reasonable time.
- (3) The director-general need not decide whether an activity is a suitable activity for a public unleased land permit if—
  - (a) the director-general has given the applicant an inspection notice; and
  - (b) the applicant does not comply with the notice.

**Division 3.6 Public unleased land permits—  
decision**

**57 Public unleased land permit—decision on application**

- (1) This section applies if the director-general receives an application for a public unleased land permit.
- (2) The director-general may issue the public unleased land permit to the applicant only if reasonably satisfied that—
  - (a) the applicant is a suitable person to hold the public unleased land permit; and
  - (b) if the applicant is a corporation—each influential person for the applicant is a suitable person to hold the public unleased land permit; and

- (c) the activity is a suitable activity for the public unleased land permit.

*Note* **Suitable person**, to hold a public unleased land permit—see s 46.  
**Suitable activity**, for a public unleased land permit—see s 49.

- (3) However, the director-general must not issue a public unleased land permit to carry on any of the following activities in a wilderness area:
- (a) erect a building, booth, stall, post, sign or other structure;
  - (b) supply goods or services.
- (4) A public unleased land permit may be subject to any condition that the director-general reasonably believes is necessary to meet the objectives of this Act.

**Examples—conditions**

- 1 that the permit-holder must hold a stated kind of insurance
- 2 that the permit-holder must fence the permitted public unleased land
- 3 a financial assurance condition (see s 60)

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (5) The director-general must, not later than the required time—
- (a) decide the application; and
  - (b) tell the applicant about the decision on the application.
- (6) In this section:

**required time** means the latest of the following:

- (a) if the director-general gives the applicant a personal information notice under section 48—28 days after the director-general receives the stated information;

- (b) if the director-general gives the applicant an activity information notice under section 51—28 days after the director-general receives the information;
- (c) if the director-general gives the applicant an additional approval notice under section 52—28 days after the director-general receives the approval, licence, permit or other authority;
- (d) if the director-general gives the applicant a public consultation notice under section 53 and receives a submission during the public consultation period—28 days after the director-general receives the submission;
- (e) if the director-general gives the applicant a public consultation submission notice under section 54 and receives a submission during the show cause period—28 days after the director-general receives the submission;
- (f) if the director-general gives the applicant a risk management plan notice under section 55—28 days after the director-general receives the risk management plan;
- (g) if the director-general gives the applicant an inspection notice under section 56—28 days after the director-general inspects the object;
- (h) 28 days after the day the director-general receives the application.

*Note* Failure to issue a public unleased land permit within the required time is taken to be a decision not to issue the public unleased land permit (see [ACT Civil and Administrative Tribunal Act 2008](#), s 12).

## **58 Public unleased land permit—form**

- (1) A public unleased land permit must—
  - (a) be in writing; and

- (b) include the following information:
  - (i) the name of the permit-holder;
  - (ii) the location of the permitted public unleased land;
  - (iii) the permitted activity;
  - (iv) the permitted times;
  - (v) the term of the permit;
  - (vi) the conditions on the permit;
  - (vii) anything else prescribed by regulation.
- (2) A public unleased land permit may include anything else the director-general considers relevant.

**59 Public unleased land permit—term**

- (1) A public unleased land permit starts on the day stated in the permit.
- (2) The director-general must not issue a public unleased land permit for longer than 2 years.
- (3) A public unleased land permit expires on the day stated in the permit.

**Division 3.7 Public unleased land permits—  
financial assurance conditions**

**60 Meaning of *financial assurance condition***

In this Act:

*financial assurance condition*, on a public unleased land permit, means a condition requiring the permit-holder to give the director-general a financial assurance of a stated kind and amount.

**61 Financial assurance condition—imposition**

- (1) The director-general may impose a financial assurance condition on a public unleased land permit if satisfied that it is justified having regard to—
  - (a) the likelihood that the permitted activity will cause serious or material damage to the permitted public unleased land; and
  - (b) the likelihood that action will need to be taken in the future to repair the damage; and
  - (c) the financial assurance considerations (if any); and

*Note* **Financial assurance considerations**—see s (5).

  - (d) any other relevant matter.
- (2) A financial assurance must be in the form of—
  - (a) a bank guarantee; or
  - (b) a bond; or
  - (c) an insurance policy; or
  - (d) if the director-general reasonably believes that, in the circumstances, the forms of assurance in paragraphs (a), (b) and (c) are not appropriate—another form of security that the director-general considers appropriate.
- (3) The director-general must not require financial assurance of an amount greater than the total amount that the director-general reasonably believes is needed to repair the damage that could result from the activity.
- (4) A financial assurance must be given for the period stated in the condition on the public unleased land permit.

- (5) The Minister may determine matters to be considered by the director-general in deciding whether to impose financial assurance conditions on public unleased land permits (*financial assurance considerations*).
- (6) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## **62 Financial assurance condition—show cause**

- (1) If the director-general proposes to impose a financial assurance condition on a public unleased land permit, the director-general must give the applicant or permit-holder written notice of the intention to impose the condition.
- (2) The notice must state—
- (a) the grounds for the proposed condition; and
  - (b) the amount and form of the proposed financial assurance; and
  - (c) that the applicant or permit-holder may give a written submission to the director-general showing cause why the proposed condition should not be imposed; and
  - (d) that submissions may be given to the director-general only during the 20 working days (the *show cause period*) after the date of the notice.
- (3) The director-general must, within 20 working days after the end of the show cause period—
- (a) consider any submissions received under subsection (2) (d); and
  - (b) decide whether to impose the condition; and
  - (c) tell the applicant or permit-holder (a *decision notice*)—
    - (i) about the decision; and

- (ii) if the condition is to be imposed—when (the *due date*) the financial assurance must be provided.
- (4) The director-general must not decide a due date that is earlier than 10 working days after the date of the decision notice.

### **63 Financial assurance condition—permit cancellation**

- (1) This section applies if—
  - (a) the director-general imposes a financial assurance condition on a public unleased land permit; and
  - (b) the permit-holder does not provide the financial assurance—
    - (i) in accordance with the condition; or
    - (ii) by the due date.
- (2) The director-general must cancel the public unleased land permit.
- (3) In this section:  
*due date*—see section 62 (3) (c) (ii).

### **64 Financial assurance condition—claim or realisation**

- (1) This section applies if—
  - (a) the director-general issues a public unleased land permit subject to a financial assurance condition; and
  - (b) the public unleased land is seriously or materially damaged because of the use of the public unleased land under the public unleased land permit; and
  - (c) the director-general incurs, or will incur, expenses in repairing the damage to the public unleased land; and
  - (d) the damage is the kind of harm for which the financial assurance may be claimed or realised; and
  - (e) the damage was not permitted under this Act.

- (2) The director-general may recover the reasonable expenses of repairing the damage by making a claim on or realising the financial assurance.

**65 Financial assurance condition—notice before claim or realisation**

- (1) Before acting under section 64, the director-general must give the permit-holder, a written notice stating—
- (a) the serious or material damage caused by the use of the public unleased land; and
  - (b) details of the action taken, or to be taken, to repair the damage; and
  - (c) the amount of the financial assurance to be claimed or realised; and
  - (d) that the permit-holder may give a written submission to the director-general showing cause why the financial assurance should not be claimed or realised as proposed; and
  - (e) that a submission may be given to the director-general only during the 20 working days (the *show cause period*) after the date of the notice.
- (2) The director-general must, within 20 working days after the end of the show cause period—
- (a) consider any submission received under subsection (1) (d); and
  - (b) decide whether to make a claim on or realise the financial assurance; and
  - (c) tell the permit-holder about the decision.



**66 Financial assurance condition—recovery of extra costs**

- (1) This section applies if—
  - (a) the director-general makes a claim on or realises a financial assurance under a public unleased land permit; and
  - (b) the amount recovered by the director-general (the *realised assurance*) is less than the reasonable expenses that the director-general incurred, or will incur, in repairing the damage.
- (2) The director-general may give the permit-holder written notice—
  - (a) requiring the permit-holder to pay the stated amount, being the difference between the reasonable expenses and the realised assurance; and
  - (b) stating when (the *due date*) the stated amount is required to be paid.
- (3) The director-general must not decide a due date that is earlier than 20 working days after the date of the notice.
- (4) If the permit-holder does not pay the stated amount on or before the due date, the amount that remains unpaid, together with interest on the unpaid amount, is a debt due to the Territory by the permit-holder.

*Note 1* A rate of interest may be determined under s 130 for this provision.

*Note 2* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## 67 Financial assurance condition—money held by Territory

If an amount of money is held by the Territory as a financial assurance, the following provisions apply:

- (a) interest accrues on as much of the original amount as from time to time remains unclaimed by the director-general under section 64 (Financial assurance condition—claim or realisation);

*Note* A rate of interest may be determined under s 130 for this provision.

- (b) for a claim made by the director-general under section 64, the financial assurance is taken to include any accrued interest other than interest to which the permit-holder is entitled to be paid under paragraph (c);
- (c) during the period for which the financial assurance is required, on each anniversary of the payment of the original amount, the permit-holder is entitled to be paid by the Territory as much of the interest that accrued during the year that ended on the day before that anniversary as remains unclaimed by the director-general under section 64;
- (d) the amount of the original amount and accrued interest that remains unclaimed by the director-general under section 64 must be paid by the Territory to the permit-holder if—
- (i) the financial assurance is no longer required by the director-general; or
  - (ii) the public unleased land permit is—
    - (A) surrendered under section 76 (Public unleased land permit—surrender); or
    - (B) cancelled under section 81 (Public unleased land permit—taking regulatory action).

## **Division 3.8                      Public unleased land permits— amendment, transfer, renewal, etc**

### **68                      Public unleased land permit—amendment initiated by director-general**

- (1) The director-general may, by written notice (an *amendment notice*) given to a permit-holder, amend the public unleased land permit if satisfied that—
  - (a) the permit-holder is a suitable person to hold the permit as amended; and
  - (b) if the permit-holder is a corporation—each influential person for the permit-holder is a suitable person to hold the permit as amended; and
  - (c) the permitted activity is a suitable activity for the permit as amended.

*Note*        *Suitable person*, to hold a public unleased land permit—see s 46.  
              *Suitable activity*, for a public unleased land permit—see s 49.

- (2) However, the director-general may amend the public unleased land permit only if—
  - (a) the director-general has given the permit-holder written notice (a *proposal notice*) of the proposed amendment; and
  - (b) the proposal notice states that written submissions on the proposal may be made to the director-general before the end of a stated period of at least 14 days after the day the proposal notice is given to the permit-holder; and
  - (c) after the end of the stated period, the director-general has considered any submissions made in accordance with the proposal notice.
- (3) Subsection (2) does not apply if the permit-holder applied for, or agreed in writing to, the amendment.

- (4) The amendment takes effect on the day the amendment notice is given to the permit-holder or a later day stated in the notice.

**69 Public unleased land permit—application to amend permit**

- (1) A permit-holder may apply to the director-general to amend the public unleased land permit.

*Note 1* If a form is approved under s 131 for an application, the form must be used.

*Note 2* A fee may be determined under s 130 for this provision.

- (2) A permit-holder must apply to the director-general for amendment of the permit if the permit-holder is a corporation and someone else (the *new influential person*) is to become an influential person for the permit-holder.

- (3) The application must—

- (a) be in writing; and  
(b) if the permit-holder is a corporation and someone else is to become an influential person for the permit-holder—include complete details of suitability information about the new influential person.

*Note 1* *Suitability information*, about a person—see s 47.

*Note 2* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 3* If a form is approved under s 131 for this provision, the form must be used.

*Note 4* A fee may be determined under s 130 for this provision.

**70 Public unleased land permit—decision on application to amend permit**

- (1) This section applies if the director-general receives an application to amend a public unleased land permit under section 69.

- (2) The director-general may amend the permit only if satisfied that—
- (a) the permit-holder is a suitable person to hold the permit as amended; and
  - (b) if the permit-holder is a corporation—each influential person for the permit-holder is a suitable person to hold the permit as amended; and
  - (c) the permitted activity is a suitable activity for the permit as amended.

*Note 1* **Suitable person**, to hold a public unleased land permit—see s 46.  
**Suitable activity**, for a public unleased land permit—see s 49.

*Note 2* The director-general may require the applicant to undertake public consultation before making a decision—see s 53.

- (3) The director-general may impose or amend a condition on a public unleased land permit.
- (4) The director-general must, not later than the required time—
- (a) decide the application for amendment; and
  - (b) tell the permit-holder about the decision on the application.
- (5) In this section:

**required time** means the latest of the following:

- (a) if the director-general gives the applicant a personal information notice under section 48—28 days after the director-general receives the stated information;
- (b) if the director-general gives the applicant an activity information notice under section 51—28 days after the director-general receives the information;
- (c) if the director-general gives the applicant an additional approval notice under section 52—28 days after the director-general receives the approval, licence, permit or other authority;

- (d) if the director-general gives the applicant a public consultation notice under section 53 and receives a submission during the public consultation period—28 days after the director-general receives the submission;
- (e) if the director-general gives the applicant a public consultation submission notice under section 54 and receives a submission during the show cause period—28 days after the director-general receives the submission;
- (f) if the director-general gives the applicant a risk management plan notice under section 55—28 days after the director-general receives the risk management plan;
- (g) if the director-general gives the applicant an inspection notice under section 56—28 days after the director-general inspects the object;
- (h) 28 days after the day the director-general receives the application.

*Note* Failure to amend a public unleased land permit within the required time is taken to be a decision not to amend the permit (see [ACT Civil and Administrative Tribunal Act 2008](#), s 12).

## **71 Public unleased land permit—application to transfer permit**

- (1) A permit-holder may apply to the director-general to transfer the public unleased land permit to someone else (the *proposed new permit-holder*).
- (2) The application must—
  - (a) be in writing; and
  - (b) include complete details of suitability information about—
    - (i) the proposed new permit-holder; and

- (ii) if the proposed new permit-holder is a corporation—each influential person for the proposed new permit-holder.

*Note 1* **Suitability information**, about a person—see s 47.

*Note 2* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 3* If a form is approved under s 131 for this provision, the form must be used.

*Note 4* A fee may be determined under s 130 for this provision.

## **72 Public unleased land permit—decision on application to transfer permit**

- (1) This section applies if the director-general receives an application to transfer a public unleased land permit under section 71.
  - (2) The director-general may transfer the public unleased land permit to the proposed new permit-holder only if satisfied that each of the following people is a suitable person to hold the permit:
    - (a) the proposed new permit-holder;
    - (b) if the proposed new permit-holder is a corporation—each influential person for the proposed new permit-holder;
- Note* **Suitable person**, to hold a public unleased land permit—see s 46.
- (3) The director-general may impose or amend a condition on a public unleased land permit.
  - (4) The director-general must, not later than the required time—
    - (a) decide the application for transfer; and
    - (b) tell the permit-holder about the decision on the application.

(5) In this section:

***required time*** means the latest of the following:

- (a) if the director-general gives the applicant a personal information notice under section 48—28 days after the director-general receives the stated information;
- (b) 28 days after the day the director-general receives the application.

*Note* Failure to transfer a public unleased land permit within the required time is taken to be a decision not to transfer the public unleased land permit (see [ACT Civil and Administrative Tribunal Act 2008](#), s 12).

### **73 Public unleased land permit—application for renewal of permit**

(1) A permit-holder may apply to the director-general to renew the public unleased land permit for a period not longer than 2 years.

*Note 1* If a form is approved under s 131 for an application, the form must be used.

*Note 2* A fee may be determined under s 130 for this provision.

(2) The application must be—

- (a) in writing; and
- (b) received by the director-general at least 30 days before the permit expires.

(3) However, the director-general may extend the time for making an application.

*Note* A permit-holder may apply to the director-general for the time to be extended, and the director-general may extend the time, even though the time has ended (see [Legislation Act](#), s 151C).

(4) If a permit-holder applies to renew a public unleased land permit under this section, the permit remains in force until the application is decided.



**74 Public unleased land permit—decision on application for renewal of permit**

- (1) This section applies if the director-general receives an application for renewal of a public unleased land permit under section 73.
- (2) The director-general may renew the public unleased land permit only if satisfied that—
  - (a) the permit-holder continues to be a suitable person to hold the permit; and
  - (b) if the permit-holder is a corporation—each influential person for the permit-holder continues to be a suitable person to hold the permit; and
  - (c) the permitted activity continues to be a suitable activity for the permit.

*Note 1* **Suitable person**, to hold a public unleased land permit—see s 46.  
**Suitable activity**, for a public unleased land permit—see s 49.

*Note 2* The director-general may require the applicant to undertake public consultation before making a decision—see s 53.

- (3) The director-general may impose or amend a condition on a public unleased land permit.
- (4) The director-general must, not later than the required time—
  - (a) decide the application for renewal; and
  - (b) tell the permit-holder about the decision on the application.
- (5) In this section:

**required time** means the latest of the following:

- (a) if the director-general gives the applicant a personal information notice under section 48—28 days after the director-general receives the stated information;

- (b) if the director-general gives the applicant an activity information notice under section 51—28 days after the director-general receives the information;
- (c) if the director-general gives the applicant an additional approval notice under section 52—28 days after the director-general receives the approval, licence, permit or other authority;
- (d) if the director-general gives the applicant a public consultation notice under section 53 and receives a submission during the public consultation period—28 days after the director-general receives the submission;
- (e) if the director-general gives the applicant a public consultation submission notice under section 54 and receives a submission during the show cause period—28 days after the director-general receives the submission;
- (f) if the director-general gives the applicant a risk management plan notice under section 55—28 days after the director-general receives the risk management plan;
- (g) if the director-general gives the applicant an inspection notice under section 56—28 days after the director-general inspects the object;
- (h) 28 days after the day the director-general receives the application.

*Note* Failure to renew a public unleased land permit within the required time is taken to be a decision not to renew the permit (see [ACT Civil and Administrative Tribunal Act 2008](#), s 12).

## **75 Public unleased land permit—replacing when lost, stolen or destroyed**

- (1) The director-general may issue a replacement public unleased land permit to a permit-holder if satisfied that the permit-holder's original permit has been lost, stolen or destroyed.

- (2) For subsection (1), the director-general may require the permit-holder to give the director-general a statutory declaration signed by the permit-holder, stating that the original public unleased land permit has been lost, stolen or destroyed.

*Note 1* A fee may be determined under s 130 for this provision.

*Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

## **76 Public unleased land permit—surrender**

- (1) A permit-holder may surrender the public unleased land permit by giving written notice (a *surrender notice*) of the surrender to the director-general.

*Note* If a form is approved under s 131 for this provision, the form must be used.

- (2) The surrender notice must be accompanied by—
- (a) the permit; or
  - (b) if the permit has been lost, stolen or destroyed—a statutory declaration signed by the permit-holder stating that the permit has been lost, stolen or destroyed.

*Note* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

## **77 Offence—fail to notify change of name or address**

- (1) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) the person's name or address changes; and
  - (c) the person does not, within 30 days after the change, give the director-general—
    - (i) written notice of the change; and

(ii) the permit.

Maximum penalty: 1 penalty unit.

(2) An offence against this section is a strict liability offence.

**78 Public unleased land permit—director-general to change name and address**

- (1) This section applies if a permit-holder gives the director-general—
- (a) written notice of a change to the person's name or address; and
  - (b) the permit.
- (2) The director-general must enter the changed details on the permit and return it to the permit-holder.

**Division 3.9 Public unleased land permits—regulatory action**

**79 Public unleased land permit—grounds for regulatory action**

- (1) Each of the following is a *ground for regulatory action* against a permit-holder:
- (a) the permit-holder gave information to the director-general in relation to an application for the issue, amendment, transfer or renewal of the permit that was false or misleading in a material particular;
- Note* Giving false or misleading information is also an offence against the [Criminal Code](#), s 338.
- (b) the permit-holder contravened a condition of the permit.

(2) In this section:

*permit-holder* includes, if the person is a corporation, each executive officer of the corporation.

**80 Public unleased land permit—regulatory action**

Each of the following is *regulatory action* when taken against a permit-holder:

- (a) imposing a condition on, or amending a condition on, the permit;
- (b) suspending the permit for a stated period or until a stated thing happens;
- (c) cancelling the permit;
- (d) cancelling the permit and disqualifying the person from applying for a public unleased land permit of that kind for a stated period or until a stated thing happens.

**81 Public unleased land permit—taking regulatory action**

- (1) If the director-general proposes to take regulatory action in relation to a permit-holder, the director-general must give the permit-holder a written notice (a *show cause notice*) stating—
  - (a) details of the proposed regulatory action; and
  - (b) the grounds for the proposed regulatory action; and
  - (c) that the permit-holder may, not later than 14 days after the day the permit-holder is given the notice, give a written submission to the director-general about the proposed regulatory action.
- (2) In deciding whether to take the proposed regulatory action, the director-general must consider any submission given to the director-general in accordance with the show cause notice.
- (3) If the director-general believes on reasonable grounds that a ground for regulatory action has been established in relation to the permit-holder, the director-general may—
  - (a) take the regulatory action stated in the show cause notice; or

- (b) if the proposed regulatory action is the cancellation and disqualification mentioned in section 80 (d)—
  - (i) cancel the permit as mentioned in section 80 (c); or
  - (ii) suspend the person’s permit as mentioned in section 80 (b); or
  - (iii) impose a condition on, or amend a condition on, the permit as mentioned in section 80 (a); or
- (c) if the proposed regulatory action is the cancellation of the person’s permit as mentioned in section 80 (c)—
  - (i) suspend the person’s permit as mentioned in section 80 (b); or
  - (ii) impose a condition on, or amend a condition on, the permit as mentioned in section 80 (a); or
- (d) if the proposed regulatory action is the suspension of the person’s permit as mentioned in section 80 (b)—
  - (i) suspend the permit for a shorter period; or
  - (ii) impose a condition on, or amend a condition on, the permit as mentioned in section 80 (a).
- (4) Regulatory action under this section takes effect on—
  - (a) the day the permit-holder is given written notice of the decision; or
  - (b) if the written notice states a later date of effect—that date.

**82 Public unleased land permit—immediate suspension**

- (1) This section applies if—
  - (a) the director-general gives a show cause notice under section 81 to a permit-holder; and

- (b) having regard to the grounds stated in the notice, the director-general believes on reasonable grounds that the person's permit should be suspended immediately in the interests of public safety.
- (2) The director-general must give the permit-holder a written notice (an *immediate suspension notice*) suspending the person's permit.
- (3) The suspension of a public unleased land permit under this section takes effect when the immediate suspension notice is given to the permit-holder.
- (4) The suspension of a public unleased land permit under this section ends—
  - (a) if regulatory action is taken against the person under section 81—at the earlier of the following times:
    - (i) when the regulatory action takes effect;
    - (ii) 30 days after the day the immediate suspension notice is given to the person; or
  - (b) if regulatory action is not taken against the person under section 81—at the earlier of the following times:
    - (i) when the person is given written notice of the director-general's decision not to take regulatory action;
    - (ii) 30 days after the day the immediate suspension notice is given to the person.

### **83 Public unleased land permit—effect of suspension**

- (1) A suspended permit does not authorise the carrying on of any activity under the permit during the suspension.
- (2) If the director-general suspends a public unleased land permit, the permit-holder is, during the suspension—
  - (a) taken not to hold the permit; and

(b) disqualified from applying for a public unleased land permit.

**84 Offence—fail to return amended, suspended or cancelled permits**

- (1) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) the permit is amended, suspended or cancelled under this division; and
  - (c) the person fails to return the permit to the director-general as soon as practicable (but not later than 7 days) after the day the person is given a reviewable decision notice under section 128 (Reviewable decision notices).

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

**85 Action by director-general in relation to amended or suspended permit**

- (1) This section applies if—
- (a) a public unleased land permit is amended or suspended under this part; and
  - (b) the permit is returned to the director-general.
- (2) For an amended permit, the director-general must—
- (a) return the amended permit to the permit-holder; or
  - (b) give the permit-holder a replacement permit that includes the amendment.
- (3) If a public unleased land permit is suspended under this part and the suspension ends before the end of the term of the permit, the director-general must return the permit to the permit-holder.



## **Division 3.10 Public unleased land permit register**

### **86 Public unleased land permit register**

- (1) The director-general must keep a register of public unleased land permits (the *permit register*).
- (2) The register must include the following details for each permit:
  - (a) the name of the permit-holder;
  - (b) the location of the permitted public unleased land;
  - (c) the permitted activity;
  - (d) the permitted times;
  - (e) the term of the permit;
  - (f) the conditions on the permit;
  - (g) anything else prescribed by regulation.
- (3) The register may include anything else the director-general considers relevant.
- (4) The register may be kept in any form, including electronically, that the director-general decides.
- (5) The register may be kept in 1 or more parts, as the director-general considers appropriate.

### **87 Correction and keeping up-to-date register**

- (1) The director-general may correct a mistake, error or omission in the permit register.
- (2) The director-general may change a detail included in the register to keep the register up-to-date.

## Part 4                                  Enforcement

### Division 4.1                          General

#### 88                          Definitions—pt 4

In this part:

*connected*—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

*warrant* means a warrant issued under division 4.6 (Search warrants).

### Division 4.2                          Authorised people

#### 89                          Authorised people

- (1) The director-general may appoint a public servant as an authorised person for this Act.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) Also, an investigator under the *Fair Trading (Australian Consumer Law) Act 1992* is an authorised person for this Act.

## **90 Identity cards**

- (1) This section applies in relation to an authorised person appointed under section 89 (1).

*Note* An authorised person who is an investigator is issued with an identity card under the *Fair Trading (Australian Consumer Law) Act 1992*, s 37.

- (2) The director-general must give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (3) The identity card must show—
- (a) a recent photograph of the authorised person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (4) A person commits an offence if the person—
- (a) stops being an authorised person; and
  - (b) does not return the person's identity card to the director-general as soon as practicable (but not later than 7 days) after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (5) Subsection (3) does not apply to a person if the person's identity card has been—
- (a) lost or stolen; or
  - (b) destroyed by someone else.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (5) (see *Criminal Code*, s 58).

- (6) An offence against this section is a strict liability offence.

## **91            Power not to be exercised before identity card shown**

- (1) This section applies in relation to an authorised person appointed under section 89 (1).

*Note*        For an authorised person who is an investigator, see the *Fair Trading (Australian Consumer Law) Act 1992*, s 38 (Power not to be exercised before identity card shown).

- (2) The authorised person may exercise a power under a territory law in relation to a person only if the authorised person first shows the person the authorised person's identity card.

## **Division 4.3            Directions etc**

### **Subdivision 4.3.1    General directions**

#### **92            Direction to give name and address**

- (1) This section applies if a police officer or authorised person believes on reasonable grounds that a person—
- (a) has committed, is committing or is about to commit an offence against this Act; or
  - (b) may be able to assist in the investigation of an offence against this Act.

*Note*        A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The police officer or authorised person may direct the person to give the police officer or authorised person, immediately, any of the following personal details:
- (a) the person's full name;

(b) the person's home address.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

- (3) The person may ask the authorised person to produce the authorised person's identity card for inspection by the person.
- (4) If the police officer or authorised person believes on reasonable grounds that a personal detail given by a person in response to a direction under subsection (2) is false or misleading, the police officer or authorised person may direct the person to produce evidence immediately of the correctness of the detail.
- (5) If an authorised person gives a direction under this section to a person, the authorised person must tell the person that it is an offence if the person fails to comply with the direction.

**93 Offence—fail to comply with direction to give name and address**

- (1) A person commits an offence if the person—
  - (a) is subject to a direction under section 92 (2); and
  - (b) fails to comply with the direction.

Maximum penalty: 5 penalty units.

*Note* It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the authorised person did not produce the authorised person's identity card for inspection by the person if asked.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) This section does not apply to a person if the police officer or authorised person did not, before giving the direction, warn the person that failure to comply with the direction is an offence.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

## **94 Direction to produce approval, permit or insurance policy**

- (1) A police officer or authorised person may direct—
- (a) an approval-holder to produce the approval; or
  - (b) a permit-holder to produce—
    - (i) the permit; and
    - (ii) if the permit includes a financial assurance condition requiring the permit-holder to hold a stated kind of insurance policy—the insurance policy.

*Note* It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (2) The direction must be in writing and state—
- (a) the approval, permit or policy to be produced; and
  - (b) where and to whom the approval, permit or policy is to be produced; and
  - (c) when the direction must be complied with.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

- (3) The police officer or authorised person may do 1 or more of the following:
- (a) inspect the approval, permit or policy produced;
  - (b) make copies of, or take extracts from the approval, permit or policy produced;

- (c) seize and remove the approval, permit or policy produced if the officer or person believes on reasonable grounds that it may provide evidence of an offence against this Act.
- (4) In this section:
  - approval-holder*** means a person who holds—
    - (a) closed road approval; or
    - (b) a work approval; or
    - (c) a sign approval.

**95 Offence—fail to comply with direction to produce approval, permit or insurance policy**

- (1) A person commits an offence if the person—
  - (a) is subject to a direction under section 94; and
  - (b) fails to comply with the direction.

Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the direction.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

**96 Direction to leave permitted public unleased land**

- (1) This section applies if a police officer or authorised person believes on reasonable grounds that—
  - (a) a person is using an area of public unleased land at a particular time; and
  - (b) someone else (the ***permit-holder***) holds a public unleased land permit to exclusively use the area at the time; and

(c) the person is using the area without the consent of the permit-holder.

- (2) The police officer or authorised person may direct the person to leave the area of permitted public unleased land during the permitted times.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

- (3) A direction must be in writing and state—

- (a) the area of permitted public unleased land; and  
(b) the permitted times.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

- (4) If a police officer or authorised person gives a direction to a person, the police officer or authorised person must tell the person that it is an offence if the person fails to comply with the direction.

**97 Offence—fail to comply with direction to leave permitted public unleased land**

- (1) A person commits an offence if the person—  
(a) is subject to a direction under section 96 (2); and  
(b) fails to comply with the direction.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.  
(3) This section does not apply to a person if the police officer or authorised person did not, before giving the direction, warn the person that failure to comply with the direction is an offence.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).



**98 Direction to remove objects from public unleased land**

- (1) This section applies if a person uses public unleased land by placing an object on the public unleased land.

*Note* *Use*, public unleased land—see s 41.

- (2) However, this section does not apply if—

- (a) the placement is authorised under an approval or public unleased land permit under this Act; or

**Example—approval that may authorise placement**

- 1 closed road approval
- 2 work approval

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (b) the placement is authorised under another territory law; or
- (c) if the object is a vehicle—the vehicle is parked on a road or road related area in a way that does not contravene the [Road Transport \(Safety and Traffic Management\) Act 1999](#).

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (3) A police officer or authorised person may direct (a **removal direction**) the person to remove the object.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

- (4) A removal direction must be in writing and state—

- (a) the public unleased land; and
- (b) the object to be removed; and

- (c) when the direction must be complied with (the *due date*), being a day at least—
  - (i) if the object is a vehicle—2 days after the direction is given to the person; or
  - (ii) in any other case—7 days after the direction is given to the person; and
- (d) that, if the object is not removed by the due date—
  - (i) the person may be committing an offence under section 99 (Offence—fail to comply with removal direction); and
  - (ii) the object may be removed and disposed of under section 105 (Removal of objects by Territory) and section 106 (Disposal of objects by Territory).
- (5) A removal direction may be given to a person by securely attaching the direction to the object in a conspicuous place.
- (6) To remove any doubt, a removal direction given to a person in the way mentioned in subsection (5) is taken to be given to the person on the day the direction is attached to the object.
- (7) In this section:

*park*, a vehicle—see the *Road Transport (Safety and Traffic Management) Regulation 2000*, section 3B.

*road*—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

*road related area*—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

## 99 Offence—fail to comply with removal direction

- (1) A person commits an offence if the person—
  - (a) is subject to a removal direction; and

(b) fails to comply with the direction.

Maximum penalty: 10 penalty units.

(2) An offence against this section is a strict liability offence.

### **Subdivision 4.3.2 Urgent action**

#### **100 Director-general's directions**

(1) This section applies if the director-general believes on reasonable grounds that there is, or is likely to be—

(a) either—

(i) a breach of a public unleased land permit; or

(ii) another contravention of this Act; and

(b) the breach or other contravention is causing, or is likely to cause—

(i) undue disturbance, inconvenience or offence to people lawfully at adjacent or nearby places; or

(ii) undue risk to people or property.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

(2) The director-general may direct (a *director-general's direction*) 1 or more of the following people to take action to prevent the breach or other contravention:

(a) a permit-holder;

(b) an employee of a permit holder;

(c) a person working at the permitted place.

**Example—director-general’s direction**

to reduce loud noise coming from the permitted public unleased land

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) A director-general’s direction must—
- (a) be in writing; and
  - (b) either—
    - (i) state—
      - (A) the action to be taken; and
      - (B) when the direction must be complied with; or
    - (ii) state—
      - (A) the conduct not to be undertaken; and
      - (B) how long the direction is in force.
- (4) A director-general’s direction must not state a day or time for compliance that is earlier than the day or time the person is given the director-general’s direction.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

**101 Offence—fail to comply with director-general’s direction**

- (1) A person commits an offence if—
- (a) the person is subject to a director-general’s direction; and
  - (b) the person fails to take reasonable steps to comply with the direction.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

## **102 Emergency closure of permitted place**

- (1) A senior police officer may order a permit-holder to close a permitted place (an *emergency closure order*) if the officer believes on reasonable grounds that—
- (a) a breach of this Act has happened, or is likely to happen; and
  - (b) the closure of the place is necessary to prevent or reduce undue risk to people or property.
- (2) If an emergency closure order is made under subsection (1), a police officer must, in writing, tell the permit-holder—
- (a) the name of the senior police officer making the order; and
  - (b) when the order starts; and
  - (c) when the order ends.

*Note* An emergency closure notice for the emergency closure order must be given to the permit-holder as soon as practicable after the order is made (see s 103).

- (3) If an emergency closure order is in force for a permitted place, the permit is suspended for the period of the order.

## **103 Emergency closure notice**

- (1) If a senior police officer makes an emergency closure order for a permitted place, the officer must, as soon as practicable, give a notice (an *emergency closure notice*) to the permit-holder.
- (2) An emergency closure notice must—
- (a) be in writing; and
  - (b) state—
    - (i) the date of issue of the notice; and

- (ii) when the order starts; and
  - (iii) when the order ends; and
  - (iv) the breach of this Act that the senior police officer believes has happened or is likely to happen; and
  - (v) the grounds for the officer's belief; and
- (c) be signed by the senior police officer.
- (3) The senior police officer must also—
- (a) keep a record of the emergency closure notice in the police records; and
  - (b) give a copy of the notice to the director-general.

**104 Offence—fail to comply with emergency closure order**

- (1) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) an emergency closure order is in force for the person; and
  - (c) the person fails to comply with the emergency closure order.
- Maximum penalty: 30 penalty units.
- (2) An offence against this section is a strict liability offence.

**Division 4.4 Removal and disposal of objects on public unleased land by Territory**

**105 Removal of objects by Territory**

- (1) This section applies if—
- (a) a person—
    - (i) is subject to a removal direction for an object; and

*Note* **Removal direction**—see s 98 (3).

- (ii) fails to comply with the direction; or
- (b) an object is on public unleased land and an authorised person reasonably believes that the object is—
  - (i) abandoned; or
  - (ii) causing an obstruction or hazard for people on or near the public unleased land.

*Note* If an authorised person reasonably believes that a vehicle on public unleased land is abandoned or causing an obstruction or hazard, the authorised person may give the owner a removal direction for the vehicle.

- (2) An authorised person may move the object to a retention area.

## **106 Disposal of objects by Territory**

- (1) If an object is moved to a retention area under section 105—
  - (a) the object is taken to be uncollected goods under the *Uncollected Goods Act 1996*; and
  - (b) the director-general is taken to be the possessor of the goods for that Act; and
  - (c) the director-general may dispose of the goods under that Act, part 3 (Disposal of uncollected goods); and
  - (d) for that Act, section 26 (2) (a) (Claim by owner before disposal) and section 30 (1) (a) (Proceeds of sale), the reasonable costs incurred by the director-general in complying with that Act are taken to include the cost of removing the object from the public unleased land to the retention area.
- (2) However, if the object is a vehicle—
  - (a) the director-general must give the registered operator of the vehicle a written notice (a *retention notice*) stating—
    - (i) that the vehicle has been moved to a retention area; and

- (ii) when and where the vehicle may be collected; and
  - (iii) that, if the registered operator does not collect the vehicle within 7 days after the retention notice is given to the registered operator, the vehicle may be disposed of under the *Uncollected Goods Act 1996*; and
- (b) the vehicle is taken to be uncollected goods under subsection (1) (a) only if the vehicle has not been collected within 7 days after the day the retention notice is given to the registered operator.

## Division 4.5 Powers of authorised people

### 107 Power to enter premises

- (1) For this Act, an authorised person may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time when the premises is open for business, enter the premises; or
  - (c) at any time, enter premises with the occupier's consent; or
  - (d) enter premises in accordance with a public unleased land permit condition; or
  - (e) enter premises in accordance with a search warrant; or
  - (f) at any time, enter premises if the authorised person believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.
- (2) However, subsection (1) (a) and (b) do not authorise entry into a part of premises that is being used only for residential purposes.



- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) In this section:  
*at any reasonable time* includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

#### **108 Production of identity card**

- (1) An authorised person must not remain at premises entered under this part if the authorised person does not produce his or her identity card when asked by the occupier.
- (2) A police officer must not remain at premises entered under this part if the officer does not produce evidence that the officer is a police officer when asked by the occupier.

#### **109 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 107 (1) (c), an authorised person must—
  - (a) either—
    - (i) if the person is an authorised person—produce his or her identity card; or
    - (ii) if the person is a police officer—produce evidence that he or she is a police officer; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and

- (ii) that anything found and seized under this part may be used in evidence in court; and
  - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

## **110 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
  - (a) inspect or examine;

- (b) take measurements or conduct tests;
- (c) take samples;
- (d) take photographs, films, or audio, video or other recordings;
- (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 20 penalty units.

## **111 Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
  - (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
  - (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or

- (ii) used to commit, continue or repeat the offence.
- (4) Also, an authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (5) The powers of an authorised person under subsections (3) and (4) are additional to any powers of the authorised person under subsections (1) or (2) or any other territory law.
- (6) Having seized a thing, an authorised person may—
- (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
  - (b) the person does not have an authorised person's approval to interfere with the thing.
- Maximum penalty: 20 penalty units.
- (8) An offence against this section is a strict liability offence.

## Division 4.6 Search warrants

### 112 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.

- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
  - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.

### **113 Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, email, radio or other form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.

- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
  - (a) the magistrate must tell the authorised person—
    - (i) the terms of the warrant; and
    - (ii) the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.

- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**114 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
- (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises— identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the authorised person or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**115 Details of search warrant to be given to occupier etc**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**116 Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**Division 4.7 Return and forfeiture of things seized**

**117 Receipt for things seized**

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 111 (Power to seize things).



- (3) A receipt under this section must include the following:
- (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

*Note* If a form is approved under s 131 for this provision, the form must be used.

**118 Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.

- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier’s representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

**119 Access to things seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

**120 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, unless—
  - (a) a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence in the prosecution; or

- (b) an application for the forfeiture of the seized thing is made to a court under the *Confiscation of Criminal Assets Act 2003* or another territory law within 1 year after the day the seizure is made; or
  - (c) all proceedings in relation to the offence with which the seizure was connected have ended and the court has not made an order about the thing.
- (2) However, this section does not apply to a thing—
- (a) if the director-general believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
  - (b) if possession of it by its owner would be an offence.

## **121 Forfeiture of seized things**

- (1) This section applies if—
- (a) anything seized under this part has not been returned under section 120; and
  - (b) an application for disallowance of the seizure under section 123—
    - (i) has not been made within 10 days after the day of the seizure; or
    - (ii) has been made within the 10-day period, but the application has been refused or withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
- (a) it is forfeited to the Territory; and
  - (b) it may be sold, destroyed or otherwise disposed of as the director-general directs.

## 122 Power to destroy unsafe things

- (1) This section applies to anything inspected or seized under this part by an authorised person if the authorised person is satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (2) The authorised person may direct a person in charge of the premises where the thing is to destroy or otherwise dispose of the thing.
- (3) The direction may state 1 or more of the following:
  - (a) how the thing must be destroyed or otherwise disposed of;
  - (b) how the thing must be kept until it is destroyed or otherwise disposed of;
  - (c) the period within which the thing must be destroyed or otherwise disposed of.
- (4) A person in charge of the premises where the thing is commits an offence if the person contravenes a direction given to the person under subsection (2).

Maximum penalty: 20 penalty units.

- (5) Alternatively, if the thing has been seized under this part, the authorised person may destroy or otherwise dispose of the thing.
- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (5) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
  - (a) the person who owned the thing;
  - (b) each person in control of the premises where the thing was.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

- (7) An offence against this section is a strict liability offence.

**123 Application for order disallowing seizure**

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the director-general.
- (3) The director-general is entitled to appear as respondent at the hearing of the application.

**124 Order for return of seized thing**

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 123 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
  - (a) an order directing the director-general to return the thing to the applicant or to someone else who appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;

- (c) an order about the payment of costs in relation to the application.

## **Division 4.8 Enforcement—miscellaneous**

### **125 Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the person causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) The notice must state that—
  - (a) the person may claim compensation from the Territory if the person suffers loss or expense because of the damage; and
  - (b) compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction; and
  - (c) the court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

### **126 Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person.

- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## Part 5 Notification and review of decisions

### 127 What is a *reviewable decision*?—pt 5

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 128 Reviewable decision notices

If the director-general makes a reviewable decision, the director-general must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The director-general must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see [ACT Civil and Administrative Tribunal Act 2008](#), s 67A).

*Note 2* The requirements for a reviewable decision notice are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

### 129 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.



## Part 6 Miscellaneous

### 130 Determination of fees etc

- (1) The Minister may determine—
  - (a) fees for this Act; and
  - (b) the annual percentage rate at which interest payable under section 66 (4) (Financial assurance condition—recovery of extra costs) is to be calculated; and
  - (c) the annual percentage rate at which interest accruing under section 67 (a) (Financial assurance condition—money held by Territory) is to be calculated.

*Note* The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees, charges and other amounts (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

### 131 Approved forms

- (1) The director-general may approve forms for this Act.
- (2) If the director-general approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### 132 Regulation-making power

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## Schedule 1 Reviewable decisions

(see pt 5)

| column 1<br>item | column 2<br>section | column 3<br>decision  | column 4<br>entity                             |
|------------------|---------------------|---|--|
| 1                | 12 (4)              | refuse to issue closed road approval                                | applicant for approval                         |
| 2                | 12 (5)              | impose condition on closed road approval                            | applicant for approval                         |
| 3                | 15 (2)              | issue drainage direction  | person directed                                |
| 4                | 19 (5)              | refuse to issue work approval                                       | applicant for approval                         |
| 5                | 19 (6)              | impose condition on work approval                                   | applicant for approval                         |
| 6                | 21 (2)              | issue repair damage direction                                       | person directed                                |
| 7                | 25 (4)              | refuse to issue sign approval                                       | applicant for approval                         |
| 8                | 25 (6)              | impose condition on sign approval                                   | applicant for approval                         |
| 9                | 31 (2)              | issue plant pruning direction                                       | person directed                                |
| 10               | 34 (2)              | issue plant removal direction                                       | person directed                                |
| 11               | 57 (2)              | refuse to issue public unleased land permit                         | applicant for permit                           |
| 12               | 57 (4)              | issue public unleased land permit—impose condition                  | permit-holder                                  |
| 13               | 61 (1)              | impose financial assurance condition on public unleased land permit | permit-holder                                  |
| 14               | 66                  | decision to claim a financial assurance                             | permit-holder                                  |
| 15               | 68 (1)              | amend public unleased land permit                                   | permit-holder                                  |
| 16               | 70 (2)              | refuse to amend public unleased land permit                         | permit-holder                                  |
| 17               | 70 (3)              | amend public unleased land permit—impose or amend condition         | permit-holder                                  |
| 18               | 72 (2)              | refuse to transfer public unleased land permit                      | permit-holder<br>proposed new<br>permit-holder |

| <b>column 1<br/>item</b> | <b>column 2<br/>section</b> | <b>column 3<br/>decision</b>                                       | <b>column 4<br/>entity</b>    |
|--------------------------|-----------------------------|--|-------------------------------|
| 19                       | 72 (3)                      | transfer public unleased land permit—<br>impose or amend condition | proposed new<br>permit-holder |
| 20                       | 74 (2)                      | refuse to renew public unleased land permit                        | permit-holder                 |
| 21                       | 74 (3)                      | renew public unleased land permit—<br>impose or amend condition    | permit-holder                 |
| 22                       | 81 (3)                      | take regulatory action   | permit-holder                 |
| 23                       | 82 (2)                      | immediately suspend public unleased land<br>permit                 | permit-holder                 |
| 24                       | 98 (3)                      | issue removal direction  | person directed               |
| 25                       | 100 (2)                     | issue director-general's direction                                 | person directed               |

## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- Act
- corporation
- Corporations Act
- daily newspaper
- director-general (see s 163)
- police officer
- reviewable decision notice
- working day.

***activity information notice***, for part 3 (Public unleased land permits)—see section 51 (Suitability of activities—further information about activity).

***additional approval notice***, for part 3 (Public unleased land permits)—see section 52 (2) (Suitability of activities—other approvals).

***authorised person*** means an authorised person mentioned in section 89 (Authorised people).

***closed road***—see section 11 (1) (Director-general may temporarily close public roads).

***closed road approval***—see section 12 (1) (Approval to use closed road).

***connected***, for part 4 (Enforcement)—see section 88.

***conservator***—see the [Nature Conservation Act 2014](#), dictionary.

***damage*** a protected tree, for division 2.6 (Trees and other plants affecting public unleased land)—see section 30.

**director-general's direction**—see section 100 (2).

**drainage direction**—see section 15 (2) (Directions to construct surface water drains).

**emergency closure order**—see section 102 (1) (Emergency closure of permitted place).

**financial assurance condition**, on a public unleased land permit—see section 60.

**ground for regulatory action**, against a permit-holder, for division 3.9 (Public unleased land permits—regulatory action)—see section 79.

**influential person**, for a corporation, for part 3 (Public unleased land permits)—see section 42.

**inspection notice**, for part 3 (Public unleased land permits)—see section 56 (2) (Suitability of activities—inspection of object).

**land sublease**—see the [Planning and Development Act 2007](#), dictionary.

**location plan**, for part 3 (Public unleased land permits)—see section 45 (Public unleased land permit—application).

**movable signs code of practice**—see section 27 (Movable signs code of practice).

**object** includes any item of movable personal property.

**occupier**—

(a) of leased territory land, for division 2.7 (Graffiti visible from public unleased land)—see section 37; and

(b) of premises, for part 4 (Enforcement)—see section 88.

**offence**, for part 4 (Enforcement)—see section 88.

**on**, public unleased land, includes in, at or across the public unleased land.

**owner**—

- (a) of land, means the lessee of the land (or for land under a land sublease, the sublessee); and
- (b) of a vehicle, includes anyone who has a legal right to move the vehicle.

**permit** means a public unleased land permit.

**permit-holder** means a person who is the holder of a permit.

**permit register**, for division 3.10 (Public unleased land permit register)—see section 86 (1).

**permitted activity**—see section 40 (What is a *public unleased land permit*?).

**permitted public unleased land**—see section 40 (What is a *public unleased land permit*?).

**permitted time**—see section 40 (What is a *public unleased land permit*?).

**personal information notice**, for part 3 (Public unleased land permits)—see section 48 (Suitability of people—further information about people).

**plant pruning direction**—see section 31 (Direction to prune tree etc overhanging public unleased land).

**plant removal direction**—see section 34 (Direction to remove tree etc endangering public on unleased land).

**premises** includes land, structure, vehicle or boat.

**public consultation notice**, for part 3 (Public unleased land permits)—see section 53 (2) (Suitability of activities—public consultation).

**public consultation period**, for part 3 (Public unleased land permits)—see section 53 (3) (a) (iv) (Suitability of activities—public consultation).

**public consultation submission notice**, for part 3 (Public unleased land permits)—see section 54 (2) (Suitability of activities—public consultation submissions).

**public road**—see section 9.

**public unleased land**—see section 8.

**public unleased land permit**—see section 40.

**registered operator**—see the [Road Transport \(Vehicle Registration\) Act 1999](#), dictionary.

*Note* A reference to the registered operator includes each registered operator (see [Road Transport \(Vehicle Registration\) Act 1999](#), s 29).

**registered tree**, for division 2.6 (Trees and other plants affecting public unleased land)—see section 30.

**regulatory action**—see section 80.

**removal direction**—see section 98 (3) (Direction to remove objects from public unleased land).

**repair damage direction**—see section 21 (2) (Directions to repair damage to public unleased land).

**reserve**—see the [Nature Conservation Act 2014](#), section 169.

*Note* Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

**retention area**, for division 4.4 (Removal and disposal of objects on public unleased land by Territory)—see the [Uncollected Goods Act 1996](#), dictionary.

**reviewable decision**, for part 5 (Notification and review of decisions)—see section 127.

**risk management plan notice**, for part 3 (Public unleased land permits)—see section 55 (2) (Suitability of activities—risk management plan).

**show cause period**, for part 3 (Public unleased land permits)—see section 54 (3) (b) (ii) (Suitability of activities—public consultation submissions).

**sign**, on public unleased land—see section 24.

**sign approval**—see section 25 (1) (Approval to place sign on public unleased land).

**suitability information**—

(a) about a person—see section 47; and

(b) about an activity—see section 50.

**suitable activity**, for a public unleased land permit—see section 49.

**suitable person**, to hold a public unleased land permit—see section 46.

**tree protection approval**, for division 2.6 (Trees and other plants affecting public unleased land)—see section 30.

**use**, public unleased land, for part 3 (Public unleased land permits)—see section 41.

**vehicle**—see the [Road Transport \(General\) Act 1999](#), dictionary.

**warrant**, for part 4 (Enforcement)—see section 88.

**wilderness area**—see the [Nature Conservation Act 2014](#), section 170.

**work**, on public unleased land—see section 18.

**work approval**—see section 19.



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

|   |   |
|---|---|
| A = Act   | NI = Notifiable instrument  |
| AF = Approved form                                  | o = order   |
| am = amended  | om = omitted/repealed   |
| amdt = amendment                                    | ord = ordinance   |
| AR = Assembly resolution                            | orig = original   |
| ch = chapter  | par = paragraph/subparagraph                                      |
| CN = Commencement notice                            | pres = present  |
| def = definition                                    | prev = previous   |
| DI = Disallowable instrument                        | (prev...) = previously  |
| dict = dictionary                                   | pt = part   |
| disallowed = disallowed by the Legislative Assembly | r = rule/subrule  |
| div = division                                      | reloc = relocated   |
| exp = expires/expired                               | renum = renumbered  |
| Gaz = gazette                                       | R[X] = Republication No   |
| hdg = heading                                       | RI = reissue  |
| IA = Interpretation Act 1967                        | s = section/subsection  |
| ins = inserted/added                                | sch = schedule  |
| LA = Legislation Act 2001                           | sdiv = subdivision  |
| LR = legislation register                           | SL = Subordinate law  |
| LRA = Legislation (Republication) Act 1996          | sub = substituted   |
| mod = modified/modification                         | <u>underlining</u> = whole or part not commenced or to be expired |

## Endnotes

3 Legislation history

---

### 3 Legislation history

#### **Public Unleased Land Act 2013 A2013-3**

notified LR 21 February 2013

s 1, s 2 commenced 21 February 2013 (LA s 75 (1))

remainder commenced 1 July 2013 (s 2 and [CN2013-9](#))

as amended by

#### **[Territory and Municipal Services Legislation Amendment Act 2014 A2014-32 pt 5](#)**

notified LR 20 August 2014

s 1, s 2 commenced 20 August 2014 (LA s 75 (1))

pt 5 commenced 21 August 2014 (s 2)

#### **[Red Tape Reduction Legislation Amendment Act 2014 A2014-47 pt 10](#)**

notified LR 6 November 2014

s 1, s 2 commenced 6 November 2014 (LA s 75 (1))

pt 10 commenced 7 November 2014 (s 2)

#### **[Nature Conservation Act 2014 A2014-59 sch 2 pt 2.13](#)**

notified LR 11 December 2014

s 1, s 2 commenced 11 December 2014 (LA s 75 (1))

sch 2 pt 2.13 commenced 11 June 2015 (s 2 (1) and LA s 79)

#### **[Planning and Development \(University of Canberra and Other Leases\) Legislation Amendment Act 2015 A2015-19 pt 17](#)**

notified LR 11 June 2015

s 1, s 2 commenced 11 June 2015 (LA s 75 (1))

pt 17 commenced 1 July 2015 (s 2 and [CN2015-9](#))

## 4 Amendment history

### Commencement

s 2 om LA s 89 (4)

### Approval to carry out work on public unleased land

s 19 am [A2014-59](#) amdt 2.96; ss renum R4 LA

### Directions to repair damage to public unleased land

s 21 am [A2014-59](#) amdt 2.97

### Offence—place fixed sign on public unleased land without approval

s 26 hdg sub [A2014-32](#) s 10

s 26 am [A2014-32](#) s 11

### Offence—use public unleased land without permit

s 43 am [A2014-59](#) amdt 2.98, amdt 2.99; ss renum R4 LA

### Public unleased land permit—application

s 45 am [A2014-47](#) s 15; [A2014-59](#) amdt 2.100

### Suitability of activities—consultation with conservator

s 52A ins [A2014-59](#) amdt 2.101

### Public unleased land permit—decision on application

s 57 am [A2014-59](#) amdt 2.102; ss renum R4 LA

### Direction to remove objects from public unleased land

s 98 am [A2014-32](#) s 12

### Legislation amended—sch 2

s 133 om LA s 89 (3)

### Legislation repealed

s 134 om LA s 89 (3)

### Transitional

pt 20 hdg exp 1 July 2015 (s 205)

### Definitions—pt 20

s 200 exp 1 July 2015 (s 205)

def **commencement day** exp 1 July 2015 (s 205)

### Permissions to use closed road to be closed road approvals

s 201 exp 1 July 2015 (s 205)

### Permissions to interfere etc be work approvals

s 202 exp 1 July 2015 (s 205)

### Permissions to exhibit advertisements to be sign approvals

s 203 exp 1 July 2015 (s 205)

### Old permits to be public unleased land permits

s 204 exp 1 July 2015 (s 205)

## Endnotes

4 Amendment history

---

### Expiry—pt 20

s 205 exp 1 July 2015 (s 205)

### Consequential amendments

sch 2 om LA s 89 (3)

### Dictionary

dict def **conservator** ins [A2014-59](#) amdt 2.103  
def **land sublease** ins [A2015-19](#) s 113  
def **owner** am [A2015-19](#) s 114  
def **reserve** ins [A2014-59](#) amdt 2.103  
def **wilderness area** ins [A2014-59](#) amdt 2.103

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

| Republication No and date | Effective                     | Last amendment made by   | Republication for                         |
|---------------------------|-------------------------------|--------------------------|---|
| R1<br>1 July 2013         | 1 July 2013–<br>20 Aug 2014   | not amended              | new Act                                   |
| R2<br>21 Aug 2014         | 21 Aug 2014–<br>6 Nov 2014    | <a href="#">A2014-32</a> | amendments by<br><a href="#">A2014-32</a> |
| R3<br>7 Nov 2014          | 7 Nov 2014–<br>10 June 2015   | <a href="#">A2014-47</a> | amendments by<br><a href="#">A2014-47</a> |
| R4<br>11 June 2015        | 11 June 2015–<br>30 June 2015 | <a href="#">A2014-59</a> | amendments by<br><a href="#">A2014-59</a> |
| R5<br>1 July 2015         | 1 July 2015–<br>1 July 2015   | <a href="#">A2015-19</a> | amendments by<br><a href="#">A2015-19</a> |

## 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

© Australian Capital Territory 2015