

# Chapter 7

## Public land

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# Public land

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## Introduction

More than 60% of the ACT has been declared as public land. This includes the ACT's extensive reserve network which consists of various wilderness areas, national parks, nature reserves, catchment areas and special purpose reserves. The vast majority of reserves within this network are primarily managed for the purpose of environmental conservation. Some of the environmentally significant reserves include the Namadgi National Park, Tidbinbilla Nature Reserve and the many units of the Canberra Nature Park, such as Black Mountain and the Cooleman Ridge.

This chapter discusses the various types of public land that can be found in the ACT, which include reserves, non-reserved public land, Ramsar wetlands and public unleased land. Management plans that govern how these different types of public land are used is explained in this chapter, as well as the process of public participation for the creation of these management plans.

The chapter also discusses the various offences enacted to protect the ACT's public land, the permitted use of public land including the issuing of licences, leases and permits over public land, and a brief discussion about how the public can get involved in protecting public land in the ACT region.

## Identification of public land

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Public land is identified in the Territory Plan ('TP'). As described in Chapter 2 of this Handbook, the *Planning and Development Act 2007* (ACT) ('*Planning Act*') requires the TP to establish the land uses and other land policies for all land in the ACT other than land designated under the National Capital Plan.

Public land is identified in the TP based on written recommendations by the Conservator of Flora and Fauna (the 'conservator', established under section 20 of the *Nature Conservation Act 2014* (ACT)) or the custodian of the land to the ACT Planning and Land Authority ('ACTPLA'). These recommendations are made under section 314 of the *Planning Act* and must concern unleased land. Section 314 also allows the conservator or the custodian to recommend varying the boundaries of an area of public land, removing the public land designation of an area, or varying the purpose for which the area of public land was reserved.

A custodian is defined as an administrative unit or other entity with administrative responsibility for land in the ACT that is unleased land, public land or both (*Planning*

Act s 333). ACTPLA maintains a map (custodianship map) that identifies who has administrative responsibility for land in the ACT.

When either the custodian of an area of land, or the conservator, wishes to designate an area as public land, they must identify a purpose for this designation (s 314). The specific purposes for which an area may be designated as public land are:

- wilderness areas
- national parks
- nature reserves
- special purpose reserves
- urban open spaces
- cemetery or burial grounds
- the protection of water supply
- lakes
- sport and recreation reserves
- heritage areas (s 315).

## **Types of public land**

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Areas of public land are divided up into two overarching categories under the ACT legislative framework: areas that are reserves and areas that are not reserves. Reserves are broadly managed under the *Nature Conservation Act 2014* (ACT) (*'Nature Conservation Act'*) and make up the vast majority of public land in the ACT. Areas that are not reserves are managed under the *Planning Act*. The division between reserves and non-reserved public land exists as different management plans are created for areas of differing environmental significance. Different offences are also applicable to conduct depending on the type of reserved area involved.

### **Reserves**

Reserves are a distinct and broad category under the umbrella of public land. Section 169 of the *Nature Conservation Act* defines a reserve as a wilderness area, a national park, a nature reserve, a catchment area or any other area of land that is identified in the TP as a reserved area under section 315 of the *Planning Act* (see above) and is prescribed by regulation to be a reserve.

### **Non-reserves**

All areas of public land that do not fall within the *Nature Conservation Act* definition of a 'reserve' are regarded as non-reserved areas of public land. These areas of public land are managed under the *Planning Act* and, if the area is public unleased land, the *Public Unleased Land Act 2013* (ACT) (*'Public Unleased Land Act'*).

## **Ramsar wetlands**

Reserves may also contain Ramsar wetlands (s 175). One reserved area in the ACT, the Namadgi National Park, contains a declared Ramsar wetland known as the Ginini Flats Wetland Complex. Ginini Flats was declared to be a Ramsar site in 1996. A Ramsar site is a wetland recognised to be protected under the *Convention on Wetlands of International Importance especially as Waterfowl Habitat*, opened for signature 2 February 1971, 996 UNTS 246 (entered into force 21 December 1975) ('Ramsar Convention'). This Convention was created with the intention to prevent the widespread loss of wetlands around the world.

For an Australian wetland to be protected under this Convention, it must be declared as a Ramsar Wetland by the Federal Government pursuant to section 17 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('*EPBC Act*').

## **Public unleased land**

Public unleased land is unleased territory land that the public is entitled to use or is open to, or used by, the public (*Public Unleased Land Act* s 8). In the ACT there is a wide range of public unleased land in urban parks and nature reserves. Public unleased land is managed by the *Public Unleased Land Act* alongside either the *Planning Act* if the land is not a reserve or the *Nature Conservation Act* if the land is a reserve.

These areas of land are available for use by the public and applications can be made under the *Public Unleased Land Act* for a permit allowing exclusive use of an area of public unleased land over a specified period of time (see Part 3 of that Act). Examples of activities for which permits can be issued include weddings, corporate functions or sporting events.

## **Management objectives**

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Section 315 of the *Planning Act* sets out the specific purposes for which public land may be used (see list above). Each of these purposes have management objectives that will apply to the area of land in question. These management objectives are set out in Schedule 3 of the *Planning Act* (see table below). Each area of public land must be managed in accordance with the management objectives that apply to the area alongside the public land management plan for the area (s 316).

The management objectives are ranked in order of precedence. If an inconsistency arises in their application then objective one takes precedence over objective two, and so on (s 317(4)). For example, in a national park, any attempt to provide opportunities for a recreational activity must be considered in light of the area's primary objective of conserving the natural environment.

The conservator can also specify other management objectives for an area of public land (s 317(2)). Management objectives are disallowable instruments, that is, they

must be submitted to the Legislative Assembly, which can then vote to disallow them. Should an inconsistency arise between the application of a management objective set out in Schedule 3 and one specified by the conservator, the former takes precedence.

Where the objective refers to the ‘natural environment’, it has the broad meaning of referring to all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified (s 317(6)).

### **Schedule 3**

<b>Special Purpose</b>	<b>Management Objective</b>
Wilderness area	<ol style="list-style-type: none"> <li>1. To conserve the natural environment in a manner ensuring that disturbance to that environment is minimal.</li> <li>2. To provide for the use of the area (other than by vehicles or other mechanised equipment) for recreation by limited numbers of people, so as to ensure that opportunities for solitude are provided.</li> </ol>
National park	<ol style="list-style-type: none"> <li>1. To conserve the natural environment.</li> <li>2. To provide for public use of the area for recreation, education and research.</li> </ol>
Nature reserve	<ol style="list-style-type: none"> <li>1. To conserve the natural environment.</li> <li>2. To provide for public use of the area for recreation, education and research.</li> </ol>
Special purpose reserve	<ol style="list-style-type: none"> <li>1. To provide for public and community use of the area for recreation and education.</li> </ol>
Urban open space	<ol style="list-style-type: none"> <li>1. To provide for public and community use of the area.</li> <li>2. To develop the area for public and community use.</li> </ol>
Cemetery or burial ground	<ol style="list-style-type: none"> <li>1. To provide for the interment or cremation of human remains and the interment of the ashes of human remains.</li> </ol>
Protection of water supply	<ol style="list-style-type: none"> <li>1. To protect existing and future domestic water supply.</li> <li>2. To conserve the natural environment.</li> <li>3. To provide for public use of the area for education, research and low-impact recreation.</li> </ol>
Lake	<ol style="list-style-type: none"> <li>1. To prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs.</li> <li>2. To prevent and control pollution of waterways.</li> <li>3. To provide for public use of the lake for recreation.</li> <li>4. To provide a habitat for fauna and flora.</li> </ol>

Sport and recreation reserve	1. To provide for public and community use of the area for sport and recreation.
Heritage area	1. To conserve natural and cultural heritage places and objects, including Aboriginal places and objects. 2. To provide for public use of the area for recreation, education and research as appropriate, and having proper regard to natural and cultural values.

## Management plans

Public land in the ACT must be managed by a ‘public land management plan’ (*Planning Act* s 318). There are two different types of public land management plans that are to be prepared depending on the nature of the public land in question. Areas of land that are reserves must be managed by a ‘reserve management plan’ in accordance with Part 8.3 of the *Nature Conservation Act*. Areas of land that are not reserves must be managed by a ‘land management plan’ in accordance with Part 10.4 of the *Planning Act*. If the area also includes a Ramsar wetland then a ‘Ramsar wetland management plan’ must also be prepared in accordance with Part 8.4 of the *Nature Conservation Act*.

The specific content of management plans has been an issue of debate in the ACT community over a number of years. Considerable public discussion has ensued over the degree of detail required in a management plan for it to meet the requirements of each respective Act. Public submissions have often called for greater detail to be included in management plans.

### ***Where to find management plans***

All management plans are disallowable instruments. This means that, under section 12 of the *Legislation Act 2001* (ACT) (*‘Legislation Act’*), management plans are defined as ‘legislative instruments’ and therefore must be notified in the ACT legislation register, the Gazette or otherwise and presented to the ACT Legislative Assembly. If they are not notified they will not be enforceable (s 62). Registration in the ACT legislation register should mean that they can be publicly inspected (s 61). If it is not practicable to notify the management plan in the register, it may also be notified in another place the Parliamentary Counsel considers appropriate for public inspection (i.e. a Government website or the Gazette) (see Chapter 1 in this Handbook for more information on the notification of legislative instruments).

### ***Reserve management plans***

A custodian of a reserve must prepare a ‘draft reserve management plan’ for the reserve pursuant to the *Nature Conservation Act* (s 177(1)). A draft reserve management plan must identify the reserve and describe how the planning and

development management objectives for the reserve are to be implemented or promoted in the reserve (s 176). The management objectives are set out in the abovementioned Schedule 3 of the *Planning Act*.

In drafting the reserve management plan, the custodian must consult with both the conservator and ACTPLA (s 177(2)). If the minister directs ACTPLA to prepare a planning report or strategic environmental assessment for the reserve, then the custodian must consider those documents when drafting the plan (s 178).

The processes for public consultation, ministerial approval and review of a reserve management plan are outlined in sections 179 through to 189 of the *Nature Conservation Act*. After this process is finished, the custodian of the reserve must take reasonable steps to implement the reserve management plan (s 188). While the custodian of the reserve must report to the minister about the implementation of the plan at least once every 5 years (s 189), this report is not automatically available to the public.

### ***Reserves assigned to IUCN categories***

Some reserves, or zones within reserves, can also be assigned to an IUCN category by the conservator (s 172(1)). This assignment of a reserve or zone to an IUCN category is a notifiable instrument (s 172(4)) (see above for definition). An IUCN category refers to the protected area management categories developed by the International Union for Conservation of Nature. These categories are recognised as global standards for reporting on protected areas.

The IUCN categories recognised under Australian law can be found in regulation 10.04 of the *EPBC Act*. There are seven different IUCN categories:

- strict nature reserve
- wilderness area
- national park
- natural monument
- habitat/species management area
- protected landscape/seascape
- managed resource protected area.

If a reserve, or a zone within a reserve, is assigned to an IUCN category, then the 'reserve management plan' for the area must be consistent with the IUCN reserve management objectives for that particular category of reserve (*Nature Conservation Act* s 176(c)(i)). The reserve management plan must also describe how the IUCN reserve management objectives for the reserve are to be implemented or promoted in the reserve or zone (s 176(c)(ii)).

The IUCN reserve management objectives for each IUCN category can be prescribed by regulation (s 173). However, the management objectives for the different reserves

outlined in Schedule 3 of the *Planning Act* still apply and take precedence over any additional IUCN objectives. The Schedule 3 objectives serve to identify the overall purpose of the reserve and the IUCN objectives are used to inform management within that broader purpose.

### ***Land management plans***

The custodian of an area of public land that is not a reserve must prepare a 'draft land management plan' pursuant to the *Planning Act* (s 321). Each land management plan must identify the area to which it applies and describe the manner in which the relevant management objectives for that area are to be implemented or promoted (s 320).

In preparing the draft land management plan, the custodian must consult with both the conservator and ACTPLA (s 321(2)). Before approving the land management plan, the minister may direct ACTPLA to prepare either a planning report or a strategic environmental assessment for the draft plan (s 322). These documents must be considered by the custodian.

The processes for public consultation, ministerial approval and review of a land management plan are outlined in sections 323 through to 332A of the *Planning Act*. After this process is finished, the custodian of the area of public land must take reasonable steps to implement the management plan (s 332). A land management plan is a disallowable instrument (s 328(2)).

### ***Ramsar wetland management plans***

The conservator must prepare a 'draft Ramsar wetland management plan' for a Ramsar wetland as required in section 193 of the *Nature Conservation Act*. A draft Ramsar wetland management plan details how a Ramsar wetland is to be managed in order to preserve and protect the ecological character of the Ramsar wetland (s 192(1)(a)). Section 192 states that the term 'ecological character' is taken to have the same meaning as stated in section 16(3) of the *EPBC Act*, which draws its meaning from the Ramsar Convention. The Ramsar Convention defines ecological character as 'the combination of the ecosystem components, processes and benefits/services that characterise the wetland at a given point' (*Ramsar Convention on Wetlands*, Res IX.1 Annex A, COP, 9th mtg (8-15 November 2005) para 15).

The conservator must consult the Commonwealth minister who is responsible for administering the *EPBC Act* when preparing a draft Ramsar wetland management plan (*Nature Conservation Act* s 194(a)). The conservator must also consult with the custodian of the area of land that the wetland is located on if that area is unleased land or public land (s 194(b)).

The processes for public consultation, ministerial approval and review of a Ramsar wetland management plan are outlined in sections 195 through to 203 of the Act.

After this process is finished, the conservator or custodian of the reserve has an obligation to take reasonable steps to implement the management plan (s 202).

### ***Management agreements***

The conservator has the power under the *Nature Conservation Act* to propose a management agreement to a supplier of gas, electricity, water, sewerage, navigation or telecommunication services, or an entity responsible for the development of land (an agency) where the agency's activities affect, or may affect, public land or unleased territory land, and the conservator reasonably believes the activities may conflict with the management objectives for the land (s 311).

Agency management agreements may deal with any or all of the following issues: access to land; fire management; drainage; management and maintenance of public or private facilities; rehabilitation of land or public or private facilities; indemnities; emergency procedures; internal stockpiling; fencing; feral animals and weed control (s 310).

### ***Public participation in drafting management plans***

The public consultation process is broadly similar for 'reserve management plans' as it is for 'land management plans' and 'Ramsar wetland management plans'. The following paragraphs will briefly outline the process for public participation in the development of reserve management plans pursuant to the *Nature Conservation Act*.

### ***Public consultation period***

When a custodian prepares a draft reserve management plan, they must also prepare a public consultation notice (s 179). The notice must state that any member of the public may provide the custodian with a written submission about the draft reserve management plan and include a copy of the draft reserve management plan.

It is important to note that the public consultation notice is a notifiable instrument and must therefore be notified pursuant to section 62 of the *Legislation Act*. This means that the public consultation notice must be registered in the ACT legislation register so that it can be publicly inspected or, if that is not practicable, it must be notified in another place the Parliamentary Counsel considers appropriate (i.e. a Government website or the Gazette) (s 61).

The public consultation period must run for a minimum of 6 weeks from the date the notice was published (*Nature Conservation Act* s 179(2)(a)(ii)). If a person chooses to make a submission to the custodian, they may withdraw their submission at any time. The custodian must consider any submissions they received during the public consultation period and then make any revisions to the plan that they consider to be appropriate (s 180).

### ***Custodian to forward the draft to the minister***

After considering public submissions, the custodian must then submit the draft reserve management plan to the ACT Minister for the Environment (“the minister”) for approval along with a report outlining the issues raised by the public during the public consultation period. However, there is no specified time period in which this must occur. If the conservator or ACTPLA made a submission recommending a change to the draft reserve management plan and the custodian did not implement that change, the custodian’s report must explain why the change was not implemented (s 180).

### ***Minister to forward the draft to a legislative committee***

The minister is required to forward the draft reserve management plan and the reports mentioned in section 180 to the appropriate Legislative Assembly committee within five working days of receiving them (s 181).

This committee must then consider the draft reserve management plan and its associated reports before either recommending that the minister approves the draft plan or should make another recommendation about the draft plan. It is usual for this committee to also call for public comment on the draft reserve management plan either as general comments or on specific aspects of the draft. These written comments can also be supplemented by public hearings at which members of the public or organisations present their submissions and answer questions asked by the committee members. The evidence gathered through this process is considered by the committee when preparing its report to the minister on the final draft reserve management plan.

### ***Minister to approve, return or reject the draft***

Once the committee has referred the draft reserve management plan back to the minister, the minister is then obligated to take action on it (s 182(4)). However, if the committee does not refer the draft reserve management plan to the minister within six months of receiving it, the minister may take action on it, but is not obligated to do so (s 182(3)).

The minister has a range of options available upon receipt of a draft reserve management plan. The minister may either approve the draft reserve management plan, return it back to the custodian and direct certain action be taken, or reject it (s 183(3)). If the minister returns the draft reserve management plan to the custodian, the minister must direct the custodian to take one or more of the following actions:

- consider a recommendation made by the Legislative Assembly committee
- conduct further specified consultation
- consider a revision suggested by the minister
- revise the draft in a specified manner (s 183(3)(b)).

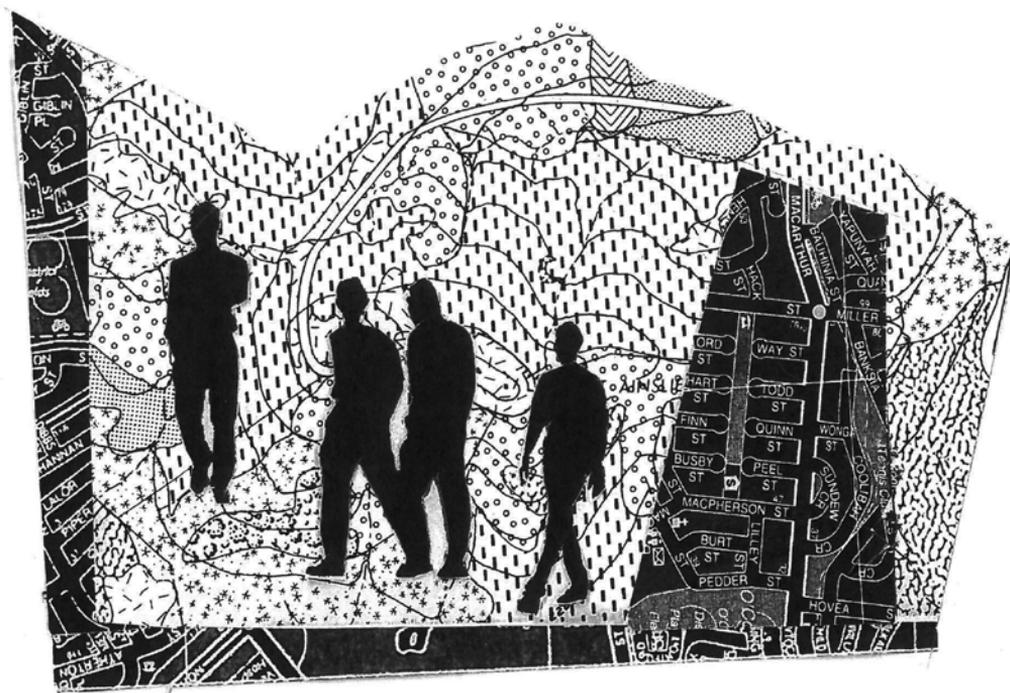
A further opportunity for public participation will arise if the minister refers the draft reserve management plan back to the custodian for further consultation under section 183.

The minister must approve, return or reject the draft reserve management plan within the required time period, which is 45 working days from the day that the minister gains the authority to take action on it. This required time period begins either on:

- the day that the Legislative Assembly Committee refers the draft reserve management plan to the minister (s 183(4)(a))
- after six months have lapsed without the committee referring the draft reserve management plan to the minister after they have received it (s 183(4)(b))
- the day a custodian resubmits a draft reserve management plan to the minister after receiving a direction to revise it (s 183(4)(c)).

### ***Draft to be presented to the Legislative Assembly***

When the minister has approved the draft reserve management plan, it then becomes a 'reserve management plan' (s 184). Reserve management plans are notifiable instruments and are therefore notified and presented to the Legislative Assembly where they are subject to disallowance. At this time, the public have the opportunity to lobby Assembly members prior to their vote on the matter. Technical variations, that is, variations to correct matters such as errors or changes in titles and which do not go through a full public consultation process, are also disallowable instruments.



## **Review of plan**

The custodian of the reserve must report to the minister about the implementation of the plan at least once every 5 years and the plans are reviewed once every 10 years. The review process must undertake the public consultation process as described above for a draft reserve management plan (s 189). Historically this review process of management plans has tended to be delayed and the *Nature Conservation Act* allows for ministerial extensions to this process (s 189(4)).

## **Land management plans and Ramsar wetland management plans**

The process for public participation in the development of a land management plan is outlined in sections 323 through to 332A of the *Planning Act*. These provisions largely reflect the abovementioned public participation provisions in the *Nature Conservation Act* applicable to draft reserve management plans.

The process for public participation in the development of Ramsar wetland management plans is outlined in sections 195 through to 203 of the *Nature Conservation Act*. These provisions also largely reflect the above mentioned public participation provisions applicable to draft reserve management plans.

## **Offences on public land**

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Offences on public land in the ACT differ depending on whether the land is a reserve, contains a declared Ramsar site, or if the land is public unleased or leased land. Offences that apply to reserves are primarily found in Chapter 9 of the *Nature Conservation Act*. Offences that apply to declared Ramsar sites are found in the *EPBC Act*. A number of offences also apply to public unleased land and are found in the *Public Unleased Land Act*.

## **Offences on reserves**

Chapter 9 of the *Nature Conservation Act* contains a number of the most serious offences that apply to reserves in the ACT. Chapter 2 of the *Criminal Code 2002* (ACT) applies to all offences against the *Nature Conservation Act* (s 5) and sets out the general principles of criminal responsibility under territory laws.

Many of the offences under the *Nature Conservation Act* are strict liability offences. Strict liability means that there are no fault elements for the physical elements of the offence (*Criminal Code 2002* (ACT) s 23(a)). In other words, for a strict liability offence, the prosecution need only to prove that the accused's conduct was in contravention of the Act. The prosecution does not need to prove that the accused intended to contravene the Act. However, for strict liability offences, the accused may raise the defence that they made an honest and reasonable mistake as to the facts in relation to the physical elements of the offence (s 23(b)).

Where a person commits an offence or carries out a prohibited activity in a reserve, they may be found guilty and ordered to pay a fine consisting of penalty units. The value of a penalty unit is subject to change and is currently the equivalent of \$150 where the offence is committed by an individual and \$750 where the offence is committed by a corporation (*Legislation Act* s 133).

### ***Reserves—offences generally***

Part 9.1 of the Nature Conservation Act contains a number of offences applicable to conduct in all reserves unless they are subject to an exception contained in an ‘activities declaration’ or other statutory exceptions (discussed below). These general offences include:

- enter a reserve without paying the entry fee (max. 20 penalty units) (s 213)
- taking an animal into, or allowing an animal to enter, a reserve (max. 50 penalty units) (s 214)
- feeding a native animal in a reserve (max. 10 penalty units) (s 215)
- interfering with a trap or bait in a reserve (max. 30 penalty units) (s 216)
- possessing or using a weapon in a reserve (max. 50 penalty units) (s 217)
- damaging a native plant in a reserve (max. 50 penalty units) (s 218)
- taking a plant, or plant reproductive material, into a reserve (max. 30 penalty units) (s 219)
- planting a plant in a reserve (max. 30 penalty units) (s 220)
- removing soil or stone from a reserve (max. 30 penalty units) (s 221)
- damaging, destroying or removing things in a reserve (max. 50 penalty units) (s 222).

### ***Reserves—offences in wilderness areas***

A ‘wilderness area’ is an area of public land that has been reserved in the TP for a wilderness area under the *Planning Act* (*Nature Conservation Act* s 170). Part 9.2 of the *Nature Conservation Act* outlines the offences that specifically apply to these types of reserves. These include:

- making a road in a wilderness area (max. 50 penalty units) (s 223)
- using a motor vehicle off road in a wilderness area (max. 50 penalty units) (s 224)
- excavating in a wilderness area without a licence (max. 50 penalty units) (s 225)
- failing to restore a wilderness area after excavating it (max. 20 penalty units) (ss 226 and 227).

## ***Reserves—offences about clearing native vegetation***

Part 9.4 of the Act contains offences related to the clearing of native vegetation. Native vegetation means any trees, understorey plants, groundcover consisting of any grass or herbaceous vegetation, or plants occurring in a wetland or stream, that are indigenous to the area that they are in (s 232). Clearing native vegetation can include actions such as cutting down, felling, thinning, logging, removing, burning or killing native vegetation (s 234).

For the purpose of Part 9.4, clearing vegetation will be taken to have ‘caused material harm’ if the clearing happens in a wetland (that is not a declared Ramsar site); the total area cleared is between 0.2ha and 2ha; or the cost of action needed to restore the cleared native vegetation is between \$5,000 and \$50, 000 (s 235).

Clearing vegetation will be taken to have ‘caused serious harm’ if the clearing causes the loss of, or partial loss of, a critically endangered ecological community; an endangered ecological community; or a vulnerable ecological community in the reserve. Clearing vegetation also ‘causes serious harm’ if the clearing causes a substantial loss of habitat of native plants or native animals in the reserve; if it happens in a Ramsar wetland; if the total area of native vegetation cleared is more than 2ha; or the cost of action to restore the native vegetation is more than \$50, 000 (s 235). Offences in this Part include:

- knowingly clearing native vegetation and causing serious harm to a reserve (max. 2,500 penalty units, imprisonment for 7 years or both) (s 236(1))
- recklessly clearing native vegetation and causing serious harm to a reserve (max. 2,000 penalty units, imprisonment for 5 years or both) (s 236(2))
- negligently clearing native vegetation and causing serious harm to a reserve (max. 1,500 penalty units, imprisonment for 3 years or both) (s 236(3))
- knowingly clearing native vegetation and causing material harm to a reserve (max. 1,500 penalty units, imprisonment for 5 years or both) (s 237(1))
- recklessly clearing native vegetation and causing material harm to a reserve (max. 1,000 penalty units, imprisonment for 2 years or both) (s 237(2))
- negligently clearing native vegetation and causing material harm to a reserve (max. 750 penalty units, imprisonment for 1 years or both) (s 237(3))
- clearing native vegetation in a reserve (max. 50 penalty units) (s 238).

## ***Reserves—offences about damaging land***

Part 9.5 of the Act deals with offences about damaging land. ‘Damage to land’ means the destruction of the land, or removal from the land, of any of the following: clay, gravel, rock, sand, soil or stone (s 243). For example, the contamination of soil or the crushing of rocks would constitute damage to land under the Act.

It is important to note the following three definitions that apply to this Part: Damage to land in a reserve causes ‘material harm’ if the cost of action needed to rehabilitate

the area is within \$5,000 and \$50,000 (s 244). ‘Serious harm’ is the loss of, or partial loss of, a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community in the reserve (s 244). Harm that is neither material nor serious includes any loss or disadvantage to the environment in the reserve (s 247(5)). Offences in this part include:

- knowingly damaging land and causing serious harm (max. 2,500 penalty units, imprisonment for 7 years or both) (s 245(1))
- recklessly damaging land and causing serious harm (max. 2,000 penalty units, imprisonment for 5 years or both) (s 245(2))
- negligently damaging land and causing serious harm (max. 1,500 penalty units, imprisonment for 3 years or both) (s 245(3))
- knowingly damaging land and causing material harm (max. 1,500 penalty units, imprisonment for 5 years or both) (s 246(1))
- recklessly damaging land and causing material harm (max. 1,000 penalty units, imprisonment for 2 years or both) (s 246(2))
- negligently damaging land and causing material harm (max. 750 penalty units, imprisonment for 1 years or both) (s 246(3))
- damaging land and causing harm (max. 50 penalty units) (s 247).

### ***The Emergencies Act 2004 (ACT)***

The *Nature Conservation Act* (including the offences and prohibitions contained within the Act) does not apply to ‘relevant persons’ who are exercising, or purporting to exercise, a function under the *Emergencies Act 2004 (ACT)* for the purpose of protecting life or property or controlling, extinguishing or preventing the spread of a fire (*Nature Conservation Act* s 7). A ‘relevant person’ includes persons such as members of the ambulance service, fire and rescue, rural fire service, State Emergency Service or a police officer (s 7(2)).

### ***Reserves—repairing damage***

The conservator has the power to direct a person to repair any damage that they have caused to a reserve or territory property on a reserve (such as a fence or a visitor facility) (s 229). This direction is known as a ‘repair damage direction’ under the Act. This direction must be in writing and it must state what reserve or property was damaged, the extent of the damage to be repaired and when the direction must be complied with (s 229(3)). The relevant offence under this Part includes:

- failing to comply with a repair damage direction (max. 20 penalty units) (s 230).

### ***Offences on public unleased land***

Public unleased land is defined in the *Public Unleased Land Act* as unleased territory land that the public is entitled to use or is open to the public (s 8). This Act’s primary

objective is to protect the amenity and natural value of public unleased land (s 6). The Act contains a number of offences established to uphold this objective. It is useful to note that Chapter 2 of the *Criminal Code 2002* (ACT) also applies to offences under this Act (s 5).

### **Offences—Management and protection**

The *Public Unleased Land Act* includes a number of offences to help facilitate the management and protection of public unleased land. These offences include:

- using a closed road without approval (max. 10 penalty units) (s 13)
- failing to comply with a drainage direction (max. 5 penalty units) (s 16)
- carrying out work on public unleased land without approval (max. 10 penalty units) (s 20)
- failing to comply with a repair damage direction (max. 20 penalty units) (s 22)
- placing a fixed sign on public unleased land without approval (max. 10 penalty units) (s 26)
- placing a movable sign on public unleased land and failing to comply with the movable signs code of practice (max. 10 penalty units or, if the matter relates to insurance, max. 50 penalty units) (s 28)
- failing to comply with a plant pruning direction (max. 5 penalty units) (s 32)
- failing to comply with a plant removal direction (max. 50 penalty units) (s 35).

### **Offences—permits**

Part 3 of the *Public Unleased Land Act* establishes a permit system that allows suitable persons to apply for permits allowing them to exclusively use public unleased land (s 40). For the purpose of Part 3, ‘using’ public unleased land is carrying out activities on the land in a way that excludes some or all members of the public from the land (s 41). For example, placing a construction skip on a footpath would be ‘using public unleased land’. Offences that apply under this Part include:

- using public unleased land to the exclusion of others without a permit (max. 20 penalty units) (s 43)
- failing to comply with conditions of a permit granted for use of the public unleased land (max. 20 penalty units or, if the condition is a financial assurance condition, max. 30 penalty units) (s 44).

### **Offences—directions**

Police officers and authorised persons are permitted under Part 4 of the Act to give certain directions to people who are on public unleased land in order to facilitate the enforcement of the Act. Public servants may be appointed as ‘authorised persons’ by the director-general. Additionally, investigators under the *Fair Trading (Australian Consumer Law) Act 1992* (ACT) are authorised persons for the purposes of this Act. Offences under this Part include:

- failing to comply with a direction to give name and address to a police officer or authorised person if they have reasonable grounds to suspect a crime was committed or is about to be committed (max. 5 penalty units) (s 93)
- failing to comply with a direction to produce an approval, permit or insurance policy by a police officer or other authorised person (max. 10 penalty units) (s 95)
- failing to comply with a direction to leave permitted public unleased land by a police officer or other authorised person when a permit holder is lawfully using the unleased public land (max. 5 penalty units) (s 97)
- failing to comply with a director-general's direction (max. 20 penalty units) (s 101)
- failing to comply with an emergency closure order (max. 30 penalty units) (s 104).

### **Offences on declared Ramsar wetlands**

Section 17B of the *EPBC Act* makes it an offence to take an action that results in, or will result in, a significant impact on the ecological character of a Ramsar wetland. This offence is a strict liability offence (definition above) and Chapter 2 of the *Criminal Code Act 1995* (Cth) applies in relation to the general principles of criminal responsibility (s 17B(1A)).

### **Controlled activity orders**

Certain activities, such as using unleased territory land in a way that is not authorised by a licence under the *Planning Act* or a permit under the *Public Unleased Land Act*, are regarded as 'controlled activities' under the *Planning Act* and are prohibited. A list of controlled activities in relation to public land is contained in Schedule 2 of the *Planning Act*, for example failing to enter into a land management agreement as required. Controlled activities can also include those prescribed by regulation (*Planning Act* s 339).

When a person carries out a controlled activity, ACTPLA has the power to issue a controlled activity order requiring that person to stop carrying out the activity or to undertake steps to remedy any damage caused by the activity (s 358). ACTPLA has the power to make a controlled activity order either on its own initiative (s 353) or after reviewing a complaint by a member of the public (s 350). Any person who believes that someone is conducting, or has conducted, a controlled activity may complain to ACTPLA (s 340).

It is an offence to contravene a controlled activity order (s 361). It is also an offence to contravene an ACTPLA direction to carry out rectification work in relation to a controlled activity (s 367). Additionally, ACTPLA or any other person may apply to the Supreme Court seeking an injunction against a person who is carrying out, or proposes to carry out, a controlled activity (s 381).

## **Activities declarations on reserves**

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### ***Activities declaration***

The conservator has powers under the *Nature Conservation Act* to make an activities declaration to either prohibit or restrict certain activities within a reserve (s 256). Activities that are likely to be prohibited or restricted include lighting a fire, camping, driving a motor vehicle or swimming. However, the conservator can only make such a declaration if they reasonably believe that the activity in question may have a negative impact on the reserve (s 256(1)).

A restricted activity can only be carried out if the stated directions, contained in the activities declaration, are complied with (s 256(2)(a)). Prohibited activities are strictly not permitted. Once an activities declaration has been made, the declaration must be published in a daily newspaper and displayed in a clearly visible place at the reserve to which it applies (s 256(5)).

Chapter 9 offences in the *Nature Conservation Act* (discussed above), insofar as they are inconsistent with an activities declaration, do not apply if a person is undertaking a restricted activity on the reserve and is complying with the stated directions contained in the activities declaration (s 252). Certain offences under the *Public Unleased Land Act* will also not apply in some cases where an activities declaration is in force (*Public Unleased Land Act* s 43 (4A)). These declarations are useful as they allow for certain reserves, such as parts of Canberra Nature Park, to be used for activities such as the walking of dogs, which would otherwise be prohibited (*Nature Conservation Act* s 214).

### ***Contravening an activities declaration***

If a person carries out an activity that is restricted on a reserve, and contravenes those restrictions, that person has committed an offence (*Nature Conservation Act* s 257(1)). The maximum penalty for this offence is 10 penalty units. If the contravention occurs on a resource protection area (defined in Part 10.1), the maximum penalty becomes 30 penalty units.

If a person carries out an activity that is prohibited on a reserve, that person has also committed an offence (s 258(1)). This offence has a maximum penalty of 20 penalty units, and, if the offence is committed on a resource protection area, a maximum of 50 penalty units. This offence is also a strict liability offence. However, this offence does not apply if the person is authorised to engage in the conduct under a licence or permit (s 261).

### ***Restricted access to reserves***

The conservator has the power to close a reserve if they reasonably believe that public access to the reserve may endanger public safety or interfere with the management of the reserve (s 259). The reserve can also be closed to a specific

group of persons or class of persons (s 259(2)). If the conservator closes a reserve through a declaration, the declaration must be published in a daily newspaper and a notice of the declaration must be displayed on the reserve (s 259(4)).

A person commits an offence if a closed reserve declaration is in force for a reserve and the person enters the reserve in contravention of the declaration (s 260). This offence carries a maximum of 50 penalty units and is a strict liability offence. A person who is accused of committing this offence may raise the defence that they took reasonable steps to ensure that the contravention did not happen (s 260(3)).

## **Licences and leases over public land**

### ***Licences over public land***

Chapter 11 of the *Nature Conservation Act* establishes a number of nature conservation licences that individuals and corporations may apply for. These licences allow persons or entities to carry out activities that would otherwise be prohibited under the Act (s 262). Activities may include damaging land or the clearing of native vegetation for commercial, development or other purposes. The conservator will issue the licence if satisfied that the applicant, and the activity to be carried out, is suitable (s 273). A 'suitable activity', for such a licence means an activity that the conservator is satisfied is suitable for the licence, but does not include an activity prescribed by regulation as an unsuitable activity (s 268).

A person commits an offence if they hold a licence, which is subject to a condition, and the person fails to comply with the condition (s 263). The conservator may impose a 'financial assurance condition' on the licence, requiring the licensee to give the conservator a financial assurance, if the conservator is satisfied that the licensed activity may cause serious or material damage and that action may need to be taken in the future to repair the damage (s 279).

The *Planning Act* also allows for applicants to apply to ACTPLA for licences to occupy or use unleased land (s 302). An example of a licence granted under this Act may be for allowing livestock to graze on an area of unleased territory land. The custodian of the area of unleased land must provide written consent for the licence to be issued. The granting of such a licence is subject to a written agreement by the conservator. It is also worth noting that a miner's right may not be granted in relation to public land (s 338).

### ***Permits over public unleased land***

The licensing provisions within the *Nature Conservation Act* and their requirements, largely reflect the provisions in Part 3 of the *Public Unleased Land Act* which relate to permits for suitable activities on public unleased land. However, with respect to applications for permits under the *Public Unleased Land Act*, the director-general of the Environment and Planning Directorate is responsible for issuing the permit (s 57).

Public unleased land permits authorise permit-holders to exclusively use public unleased land for a certain period of time and for a certain activity (s 40). Activities that require such a permit include placing a construction bin on a footpath, holding a wedding or a concert in a park or placing tables and chairs on a footpath outside a café. The permit also allows a person to engage in conduct that would otherwise constitute an offence if it is authorised by a permit (*Nature Conservation Act* s 252(2)(b)(iv)).

A person 'uses' public unleased land if they are carrying out an activity in a manner which excludes some or all members of the public from the area (*Public Unleased Land Act* s 41). It is an offence for a person to use public unleased land in such a way without a permit that authorises the use (s 43). It is also an offence for a permit-holder to contravene any conditions that the permit may require (s 44).

To obtain a public unleased land permit, a person may apply to the director-general in writing, stating which area of public unleased land is to be used, the time period in which the land will be used and the proposed activity to be carried out on the land (s 45). The director-general, upon receiving an application, may issue the public unleased land permit to the applicant if reasonably satisfied that the applicant is a suitable person and the activity is a suitable activity. The director-general must make a decision on the application within the required time period and notify the applicant of the decision (s 57). The required time period is 28 days from the date on which the director-general received the application. 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. The director-general must consult the conservator if the application for the permit is in relation to public unleased land that occupies a reserve (s 52A). The director-general must also require the applicant to enter into a public consultation process if satisfied the activity is likely to have significant impact on people nearby (s 53).

### ***Leases over public land***

The *Planning Act* also allows ACTPLA to issue a lease for any area of public land other than a wilderness area (s 337). However, written recommendation from the conservator is required for such a lease to be granted.

## **ACT Indigenous protected areas**

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All jurisdictions in Australia except the ACT have declared indigenous protected areas ('IPAs'). These are areas of Indigenous-owned land or sea where traditional owners have entered into an agreement with the Australian government to promote biodiversity and cultural resource conservation. In the ACT, a slightly different approach has been adopted with the ACT government signing, in 2001, a Namadjgi Special Aboriginal Lease with a number of Aboriginal groups.

The Namadgi Special Purpose Aboriginal Lease provides these Aboriginal groups with:

- a right to participate in the Namadgi National Park
- acknowledgment as people with an historical association with the area
- a right to be consulted on specific regional indigenous cultural issues
- a right to be consulted on the development of new legislation or amendments to existing legislation that will impact on Namadgi National Park.

The Namadgi Special Purpose Aboriginal Lease is not a lease or licence over Namadgi National Park as defined in the *Planning Act*, but is an agreement about how Namadgi National Park is to be managed. The park remains open to the public and the special lease does not alter the conservation values enshrined for the area under the *Planning Act*.

As part of the arrangements for the agreement, in 2001 an Interim Namadgi Advisory Board was set up with the chair and half of the board membership being indigenous persons. Ultimately, it was intended that a permanent Namadgi advisory board would be established. The Interim Board last met in August 2006.

While a permanent advisory board has not been established, the ACT government has established the Namadgi Rock Art Working Group, which involves the local indigenous community in the management of Namadgi's important cultural sites. The ACT government has stated that the indigenous community should be actively engaged in the management of the ACT's conservation reserves and that it continues to investigate appropriate mechanisms to achieve this.

## **Opportunities for public involvement**

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As well as participating in the development of a plan of management for an area of public land, the public have a number of 'hands on' options for the ongoing protection and management of public areas.

Parkcare, Landcare and 'Friends of...' groups are often linked to specific reserves. These organisations provide members of the public with the opportunity to access other likeminded people and to assist with the on-ground conservation of specific reserved areas.

The Conservation Council ACT Region is the peak non-government umbrella conservation organisation in the ACT. Its membership is comprised of around 40 ACT and regional conservation groups. The Conservation Council has been particularly active in the lobbying of the ACT's politicians and bureaucrats to ensure the best possible outcomes for the ACT's environment.

The ACT also has a wide range of other community groups with a conservation focus. The National Parks Association of the ACT has a specific interest in the

management of the ACT's reserved areas. Friends of Grasslands and the Canberra Ornithologist Group are specific interest groups that have also shown significant attention to reserve management in the ACT. The Ginninderra Falls Association is another community group that has actively been involved in conservation within a specific area of the ACT region. Another opportunity for hands on participation can be found through the many projects managed by Conservation Volunteers Australia.

There are always opportunities to undertake a wide variety of volunteer activities with the above organisations and many of the ACT's other conservation groups (see the Contacts list at the back of this book).