JERVIS BAY TERRITORY

Leases Ordinance 1992

Ordinance No. 1 of 1992 as amended
made under the

Jervis Bay Territory Acceptance Act 1915

This compilation was prepared on 5 November 2009
taking into account amendments up to Ordinance No. 3 of 2009

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General’s Department, Canberra
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### Notes

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An Ordinance to provide for the granting of leases in the Jervis Bay Territory

1 Citation
This Ordinance may be cited as the *Leases Ordinance 1992*.

2 Commencement
This Ordinance is taken to have commenced on 2 April 1992.

3 Validation
To avoid any doubt, the *Leases Act 1918* of the Australian Capital Territory is taken to have applied to a lease of any territory land granted by the Minister on or after 11 May 1989 and before 2 April 1992.

4 Interpretation
In this Ordinance, unless the contrary intention appears:
- *Act* means the *Jervis Bay Territory Acceptance Act 1915*.
- *fair rent* has the meaning given by section 17.
- *territory land* means Crown land in the Territory and any land in the Territory acquired under the *Lands Acquisition Act 1906*, the *Lands Acquisition Act 1955* or the *Lands Acquisition Act 1989*.

5 Power to grant leases
The Minister may, on behalf of the Commonwealth, grant leases of territory land, other than Blocks 124 to 149 in Deposited Plan 9271/1 in the Jervis Bay Territory.
6 Exercise of powers and duties under leases

If a lease granted under a law in force in the Territory confers a power or imposes a duty on the Commonwealth, the Minister may exercise that power or perform that duty as fully and effectively as if the power were conferred or the duty imposed on him or her by the lease.

7 Conditions on leases

A lease granted under this Ordinance extends for the period, and is subject to any covenants or conditions as to rent or otherwise, determined by the Minister and set out in the lease or as prescribed by the regulations.

8 Determination of rent

(1) Without limiting the generality of section 7, a lease may be granted containing a condition or agreement that the rate at which rent is payable for a period of the lease may be determined by the Minister.

(2) If a lease is granted subject to a condition referred to in subsection (1) the Minister may determine the rate accordingly.

(3) Subject to any variation made under section 10, the rate determined under subsection (2) for a period of the lease is the rate at which the lessee must pay rent for that period.

9 Notice of determination of rent

(1) The Minister must give the lessee notice in writing of any determination made under section 8.

(2) If notice of the determination is not given to the lessee before the commencement of the period for which the rate is determined, the rate for the part of that period up to but not including the day on which the notice is given to the lessee is the rate at which the rent for the lease was payable immediately before the commencement of the period.
10  **Appeals by lessees**

(1) If the Minister makes an offer in writing to a lessee under this Ordinance for the grant of a lease at the end of the term of, or in substitution for, his or her existing lease, the lessee may within a month of receiving the offer:

(a) accept it; or

(b) apply in writing to the Minister to vary the rent or any term or condition of the lease offered.

(2) If, under section 8, the Minister determines the rent payable for a period of a lease, the lessee may within a month of receiving notice of the determination apply in writing to the Minister to vary the determined rent.

11  **Form of appeal**

An application under paragraph 10 (1) (b) or subsection 10 (2) must specify:

(a) the variation that is sought; and

(b) the reasons for which the lessee considers the variation should be made.

12  **Determination of appeals**

The Minister must:

(a) consider an application made under paragraph 10 (1) (b) or subsection 10 (2); and

(b) by notice in writing given to the lessee, either:

(i) confirm the offer or determination; or

(ii) vary the offer or determination to the extent, or in the manner, specified in the notice.

13  **Determinations not to exceed fair rent**

The Minister must not, under section 12:

(a) confirm an offer or determination if the rent payable is higher than a fair rent for the property; or

(b) vary an offer or determination so that the rent payable is higher than a fair rent for the property.
14 **Acceptance after an application for variation**

If a notice referred to in section 12 is given to a lessee and the decision of the Minister relates to an offer referred to in subsection 10 (1), the lessee may within one month of receiving the notice:

(a) if the original offer was not varied by the decision — accept or reject the offer; or

(b) if the offer was varied by the decision — accept or reject the varied offer.

15 **Review of decisions by Administrative Appeals Tribunal**

A lessee may apply to the Administrative Appeals Tribunal for review of an offer or determination that is confirmed or varied under paragraph 12 (b).

16 **Notice of lessee's right to appeal**

(1) A written offer made to a lessee under subsection 10 (1) must include a statement to the effect that the lessee may apply for the proposed rent, or any term or condition of the proposed lease, to be varied.

(2) A notice under subsection 10 (2) of the determination of the rent payable by a lessee must include a statement to the effect that the lessee may apply for variation of the determined rent.

(3) A notice to a lessee under paragraph 12 (b) of a decision confirming or varying an offer or determination must include a statement to the effect that the lessee may apply to the Administrative Appeals Tribunal for review of the decision.

17 **Fair rent**

(1) In the case of a property that is the subject of an application under paragraph 10 (1) (b), a reference in section 13 to a fair rent is a reference to a rent that it would be reasonable to pay for the property having regard to:

(a) the physical characteristics of the property; and

(b) the location of the property; and
(c) the purposes for which the property may be used under the proposed lease; and
(d) the period for which the proposed lease would be granted; and
(e) the rent payable for leases of similar properties in similar locations; and
(f) any other factors relating to the property or the proposed lease to which it would be reasonable to have regard.

(2) In the case of a property that is the subject of an application under subsection 10 (2), a reference in section 13 to a fair rent is a reference to whichever is the greater of:
   (a) a rent that it would be reasonable to pay for the property having regard to:
       (i) the physical characteristics of the property; and
       (ii) the location of the property; and
       (iii) the purposes for which the property may be used under the lease; and
       (iv) the period for which the lease was granted; and
       (v) the unexpired portion of the period for which the lease was granted; and
       (vi) the rent payable for leases of similar properties in similar locations; and
       (vii) any other factors relating to the property or the lease to which it would be reasonable to have regard; and
   (b) the minimum rent that may be fixed under the conditions, if any, of the lease that prescribe the minimum rent payable.

18 Rent reduction and relief from compliance with conditions

(1) The Minister may, for any period, approve:
   (a) the reduction of the rent payable under a lease or a tenancy, or of the amount payable for any occupation of land; or
Section 19

(b) the grant of relief, to a lessee, tenant or occupier of land, from compliance, wholly or in part, with any covenant or condition to which his or her lease, tenancy or occupation is subject;

and the liability and obligation of the lessee, tenant or occupier under the lease or tenancy or for his or her occupation is, in relation to that period, discharged to the extent of the reduction or the grant of relief.

(2) A grant of relief approved under subsection (1) may be absolute or subject to such conditions as the Minister thinks fit.

(3) Except where section 19 applies, the Minister must send by post or deliver to the lessee, tenant or occupier, notice in writing specifying the reduction or the grant of relief approved by the Minister.

19 Discharge of prior obligations

(1) If the Minister grants a lease, the Minister may, either absolutely or subject to conditions, fully discharge the lessee from all liabilities and obligations which the lessee may have incurred in respect of any prior occupation of the leased land or portion of the leased land.

(2) For the purposes of this section, the lessee is taken to have been discharged if the grant contains:

(a) an acknowledgment by the lessee of a specified sum for the prior occupation; and

(b) an agreement or covenant by the lessee to pay the specified sum;

even if the specified sum is less than the amount of the lessee’s total liability, obligation or indebtedness.

20 Survey fees

(1) The Minister may fix survey fees as he or she thinks fit, for any land leased under this Ordinance.
(2) If the Minister has fixed a survey fee, he or she must forward to the lessee, at the lessee’s last known address, a notice in writing specifying the amount of the fee and the day on which the fee is payable.

(3) If a notice has been forwarded to the lessee, the survey fee is payable by the lessee and may be recovered from the lessee as a debt due to the Commonwealth.

(4) The Minister may consent to the payment of a survey fee at a later date or by instalments.

21 Power to determine conditions of grant of leases
The Minister may determine the persons to whom and the purposes for which leases may be granted.

23 Fencing of leased land
(1) Lessees must erect on the boundaries of the land leased any fences that the Minister thinks necessary.

(2) Lessees of adjoining lands must contribute in equal proportions to the construction of dividing fences between those lands.

(3) The Minister may determine, by notice in writing given to a lessee, a period for compliance with this section in relation to a boundary of leased land.

(4) If a lessee fails to comply with a notice within the period specified in it, the Minister may determine the lease.

23A Review by Administrative Appeals Tribunal
Application may be made under the Administrative Appeals Tribunal Act 1975 of the Commonwealth to the Administrative Appeals Tribunal for review of a decision of the Minister made under subsection 20 (1), 20 (4), 23 (1), 23 (3) or 23 (4).
23B **Delegation by Minister**

The Minister may, by signed writing, delegate a power of the Minister under this Ordinance, except the power to make regulations, to:

(a) a public authority of the Commonwealth, New South Wales or the Australian Capital Territory; or

(b) an officer or employee of:
   (i) the Commonwealth, New South Wales or the Australian Capital Territory; or
   (ii) a public authority of the Commonwealth, New South Wales or the Australian Capital Territory.

24 **Regulations**

(1) The Minister may make Regulations prescribing matters:

(a) required or permitted by this Ordinance to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

(2) In particular, the Minister may make regulations prescribing matters in relation to:

(a) the persons to whom leases may be granted; and

(b) the purposes for which leases may be granted; and

(c) the periods for which leases may be granted; and

(d) the rent payable under leases; and

(e) the covenants and conditions of leases; and

(f) the method of recovering moneys due and unpaid under leases; and

(g) the determination of leases for non-fulfilment of covenants or conditions; and

(h) the method of recovering land on the determination of leases.
Regulations — savings

Regulations made for the purposes of the *Leases Act 1918* of the Australian Capital Territory and in force in the Territory immediately before the commencement of this Ordinance continue in force as if made under section 24 of this Ordinance.
Notes to the Leases Ordinance 1992

Note 1

The Leases Ordinance 1992 (in force under the Jervis Bay Territory Acceptance Act 1915) as shown in this compilation comprise Ordinance No. 1 of 1992 amended as indicated in the Tables below.

Table of Ordinances

<table>
<thead>
<tr>
<th>Year and number</th>
<th>Date of notification in Gazette and FRLI registration</th>
<th>Date of commencement</th>
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<td>No. 1, 1993</td>
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<tr>
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<td>4 Nov 2009 (see F2009L04008)</td>
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# Table of Amendments

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<tr>
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<td>S. 22</td>
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<td>S. 23B</td>
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*ad. = added or inserted     am. = amended     rep. = repealed     rs. = repealed and substituted*