

# 2022 Property Law Afternoon

The reform of the National  
Land Ordinances

Chris Wheeler and  
Bronte Carlin,  
King & Wood Mallesons

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# THE NEW LAWS GOVERNING NATIONAL LAND

## WHAT YOU NEED TO KNOW

CHRIS WHEELER, PARTNER  
BRONTE CARLIN, SOLICITOR

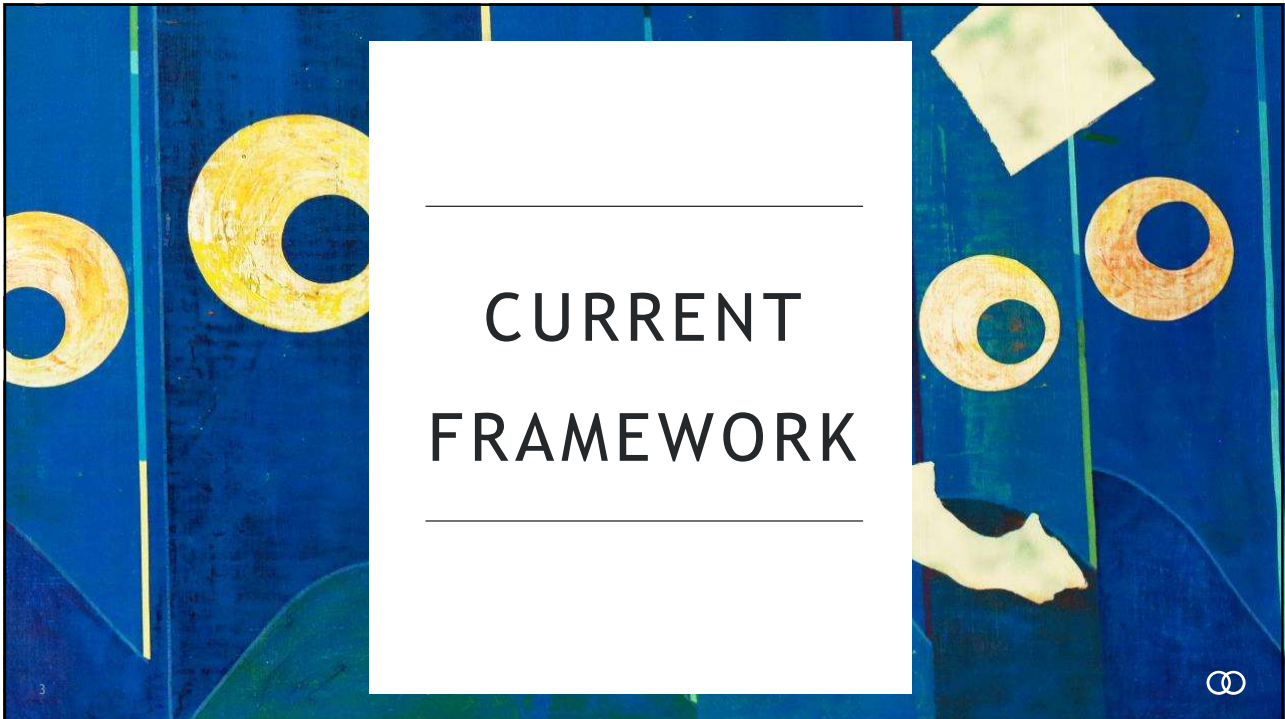
White Clouds and Moon by Du Feichen

KING & WOOD  
MALLESONS

### AGENDA

- 1 WHAT IS NATIONAL LAND?
- 2 NATIONAL LAND VS TERRITORY LAND
- 3 ADMINISTRATION OF NATIONAL LAND
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- 7 CROWN LEASES OF NATIONAL LAND
- 8 CALO AND THE P&D ACT DIFFERENCES
- 9 TRANSITIONAL REGIME





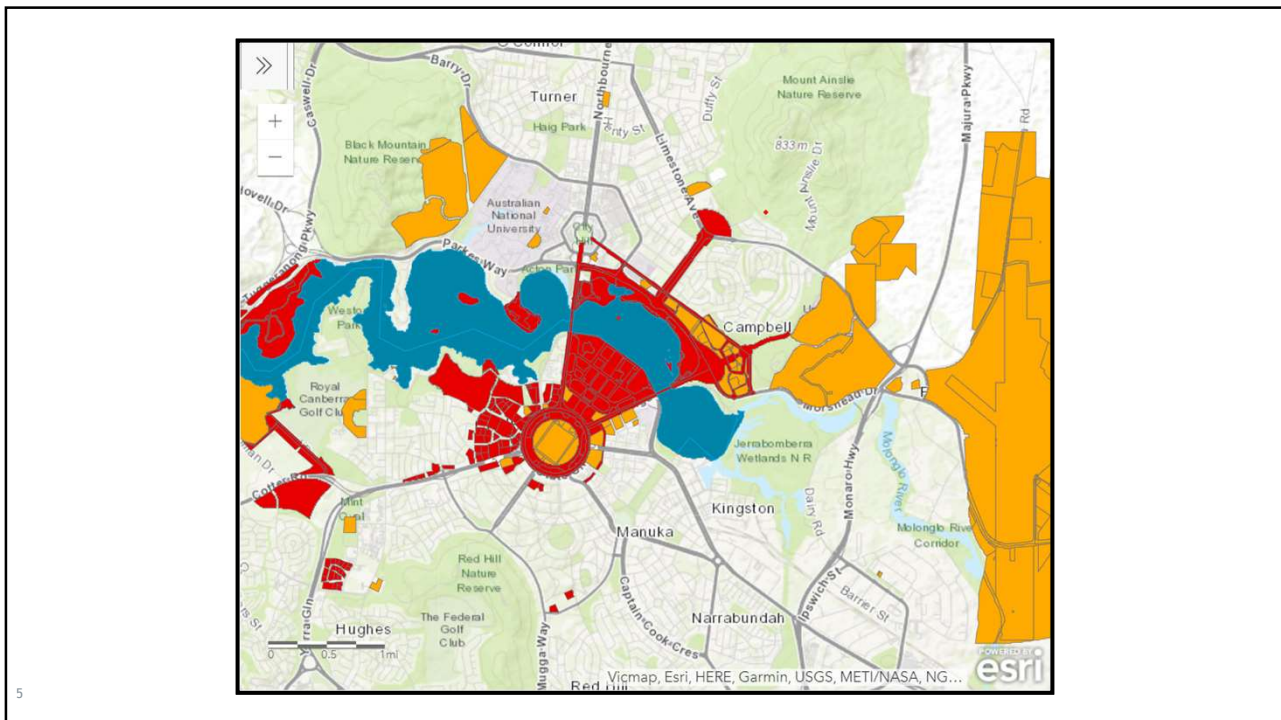
## WHAT IS NATIONAL LAND?

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Those areas of the ACT:

1. declared by the Minister to be “National Land”; or
2. which a Cth Act vests the management of that specified land to a person or body.<sup>1</sup>

<sup>1</sup> Section 27 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (“PALM Act”)



## NATIONAL LAND VS TERRITORY LAND

### NATIONAL LAND

- Administered and managed by the Commonwealth (NCA, Finance, CSIRO, Defence and GG office)
- Subject to the National Capital Plan (if also a 'Designated Area')

### TERRITORY LAND

- Administered and managed by the Territory (EPSDD)
- Subject to the Territory Plan (which must not be inconsistent with the National Capital Plan)



## DESIGNATED VS NON-DESIGNATED AREAS

- Planning designations rather than land (Crown lease) management designations
- Designated Areas - NCA has planning control
- Non-Designated Areas - ACT planning and land authority has planning control
- Some Non-Designated Areas can have NCP overlay (so need joint approvals)

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## ADMINISTRATION OF NATIONAL LAND

National Land areas are administered by several Commonwealth Government agencies, including:

- National Capital Authority (NCA) (in respect of “Designated Areas”)
- Department of Finance
- Department of Defence
- CSIRO
- Office of the Governor General

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## CURRENT LAWS - NLO AND CALO

*National Land Ordinance 1989*

*City Area Leases Ordinance 1936*

- The NLO applies CALO with amendments to National Land
- CALO continues the old pre self Gov laws to National Land leases
- NLO sunsets 1 April 2022

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THE NEW LAWS

## LEASED LAND ORDINANCE

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### *Australian Capital Territory National Land (Leased) Ordinance 2022*

- Deals with the administration of leases by the Cth upon National Land (e.g. diplomatic leases, commercial leases - Barton/Parkes)
- Effective from 1 April 2022

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## LEASE VARIATION PROCESS

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- Div 3 of Part 2 replaces the old section 11A
- Still only applies to purpose clause and related provisions
- Also picks up consolidation and subdivisions
- Application required to be made to Minister, not Supreme Court
- 4 months to decide an application (otherwise deemed refusal, like P&D ACT)

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## LVC

### *Working out the amount of lease variation charge*

(1) A **lease variation charge**, in relation to an application to vary a lease, is an amount worked out using this formula:

$$\left( V_1 - V_2 \right) \times 75\%$$

where  $V_1$  and  $V_2$  are amounts worked out using the table in subsection (2).

V1 and V2 (like s277 PDA)

Discount is 25% (not 50%)

No codification

No general remissions

Improvements cannot be taken into account (like s277A PDA)

Payment within 60 days (no payment deferral scheme)

Approval lapses if not paid on time

AAT review available

Minister can remit if “special circumstances” and if fair and reasonable



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### THE NEW LAWS

## LEASED LAND ORDINANCE

- Power to grant leases
- Leases must be consistent with NCP
- Lease cannot exceed 99 years
- Power to grant development/holding leases with a development deed
- Occupancy of existing buildings (section 9)

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THE NEW LAWS

## LEASED LAND ORDINANCE

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Key provisions of the new Leased Land Ordinance include:

- Minister's consent to a transfer of Crown lease;
- payment for improvements on leased National Land;
- relationships with neighbours and other financial matters;
- enforcement rights; and
- general provisions applying to all National Land leases.

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THE NEW LAWS

## UNLEASED LAND ORDINANCE

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*The Australian Capital Territory National Land (Unleased) Ordinance 2022* provides for:

1. the management of National Land that is open to the public (e.g. parks & roads) and other unleased National Land; and
2. the granting of licences.

Effective from 1 April 2022.

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THE NEW LAWS

## LAKES ORDINANCE

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### *Australian Capital Territory National Land (Lakes) Ordinance 2022*

- Regulates boating and other activities of the areas of Lake Burley Griffin located on National Land
- Effective from 1 April 2022

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## RESTRICTIONS ON NL CROWN LEASES

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- Some leases are subject to restrictions on dealings and may be transferred or assigned only with the Minister's consent
- E.g. Lease containing a building and development provision that has not been fully complied with
- Division 4 of Part 2 of the Leased Land Ordinance contains the requirements for obtaining the Minister's consent

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## CALO AND THE P&D ACT

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- As with CALO - there is a renewal right (unlike PDA)
- As with CALO - no concessional lease concept
- Certificate of compliance and section 298 concept

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## TRANSITIONAL PROVISIONS

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- Part 4 of the Leased Land Ordinance
- A lease granted under NLO is regarded as granted under new law (section 66)
- Affect of Gorton gift leases (lease granted before 1 Jan 1971) preserved (section 66(3))

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THE NEW LAWS GOVERNING NATIONAL LAND

# PRESENTERS

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**CHRIS  
WHEELER**

PARTNER

Canberra

Tel +61 6217 6081

Mob

Email [Chris.Wheeler@au.kwm.com](mailto:Chris.Wheeler@au.kwm.com)



**BRONTE  
CARLIN**

SOLICITOR

Canberra

Tel +61 6217 6065

Mob +61 455 958 803

Email [Bronte.Carlin@au.kwm.com](mailto:Bronte.Carlin@au.kwm.com)

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THANK YOU

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