

# NORTHERN TERRITORY OF AUSTRALIA

## TRESPASS ACT 2023

As in force at 2 May 2023

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 12 May 2023

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## TRESPASS ACT 2023

**An Act to provide for offences related to trespass and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Trespass Act 2023*.

#### **2 Commencement**

- (1) This Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 13 February 2025, it commences on that day.

#### **3 Definitions**

In this Act:

***Crown land*** means all Crown land, including reserved or dedicated land, that is not leased or occupied under a licence or an agreement.

***direction*** means a direction to leave a place given under section 9(1) or (2).

***occupier***, in relation to a place, means:

- (a) if the place is Crown land or land occupied by the Territory, the Commonwealth or a statutory corporation – a person in charge of the land; or

- (b) if the place is not Crown land or land occupied by the Territory, the Commonwealth or a statutory corporation:
  - (i) a person in lawful occupation of the place and any employee or other person acting under the authority of an occupier of the place; or
  - (ii) if there is no person in lawful occupation of the place – the owner of the place.

**order** means an order to stay off a place issued by a court under section 12.

**place** means any of the following:

- (a) a building or structure, whether permanent or temporary and whether fixed or capable of being moved;
- (b) land, whether enclosed or not;
- (c) a motor vehicle;
- (d) a trailer or caravan;
- (e) an aircraft;
- (f) a boat or other vessel;
- (g) a train or rolling stock on or for use on a railway.

**warning** means a warning to stay off a place given under section 10(1) or (2).

*Note for section 3*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

#### **4 Authority to enter and remain**

- (1) In this Act, the following persons are taken to be authorised to enter or remain in, on or at a place:
  - (a) an occupier of the place;
  - (b) an individual who has express consent from the occupier of the place to enter or remain in, on or at the place;
  - (c) an individual who has implied consent from the occupier of the place to enter or remain in, on or at the place;

- (d) an individual who is authorised to enter or remain in, on or at the place under a law in force in the Territory.
- (2) For this Act, a direction or a warning given to a person in respect of a place is taken to be the withdrawal of any express or implied consent for that person to enter or remain in, on or at the place.

## **5 Effect on other laws and agreements**

This Act does not affect anything that a person is authorised to do by or under:

- (a) any other law in force in the Territory; or
- (b) any legally enforceable agreement.

## **6 No discrimination or other prohibited conduct**

- (1) A person must not use a power under this Act to engage in prohibited conduct or otherwise contravene the *Anti-Discrimination Act 1992*.
- (2) In this section:

***prohibited conduct***, see section 4(1) of the *Anti-Discrimination Act 1992*.

## **7 Traditional rights in land**

To avoid doubt, this Act does not affect the existence, enjoyment or exercise of:

- (b) any native title rights and interests, within the meaning of the *Native Title Act 1993* (Cth), or any other rights under that Act; or
- (b) any rights under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

## **8 Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 8*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2                    Enforcement provisions**

### **9                    Direction to leave**

- (1) An occupier of a place may direct a person in, on or at the place to leave the place.
- (2) A police officer may direct a person in, on or at a place to leave the place:
  - (a) at the request of an occupier of the place; or
  - (b) on the officer's own initiative in relation to Crown land or land occupied by the Territory, the Commonwealth or a statutory corporation.
- (3) A direction may specify that the person is banned from returning to and entering the place for a period of up to 7 days from the day the direction is received by the person.
- (4) If no period is specified in the direction, the person is banned from returning to and entering the place for a period of 72 hours from the time the direction is received by the person.
- (5) Unless otherwise authorised, a person who is directed to leave a place must leave the place as soon as reasonably practicable and not return to or enter the place within the period applicable under subsection (3) or (4).

### **10                  Warning to stay off**

- (1) An occupier of a place may warn a person that the person does not have permission to enter the place and must stay off the place if:
  - (a) the person is trespassing, or has trespassed, in, on or at the place; or
  - (b) the occupier has reasonable grounds to suspect that the person is likely to trespass in, on or at the place.
- (2) A police officer may warn a person that the person does not have permission to enter the place and must stay off the place:
  - (a) at the request of an occupier of the place; or
  - (b) on the officer's own initiative in relation to Crown land or land occupied by the Territory, the Commonwealth or a statutory corporation.

- (3) A warning may specify that the person is banned from entering the place for a period not exceeding 12 months from the day the warning is received by the person.
- (4) If no period is specified in the warning, the person is banned for a period of 3 months from the day the warning is received by the person.
- (5) Unless otherwise authorised, a person who is warned to stay off a place must not enter the place during the period applicable under subsection (3) or (4).

#### **11 Manner of giving direction or warning**

- (1) A direction or a warning may be given to a person orally or in writing.
- (2) A direction or warning may be given orally to members of a group by addressing the group as a whole and making it clear that each member is included in the direction or warning.

#### **12 Court order to stay off**

- (1) A court of competent jurisdiction may order a person found guilty of a trespassing offence in relation to a place to stay off and not enter that place for a period of up to 12 months.

- (2) In this section:

***trespassing offence*** means any of the following:

- (a) an offence against this Act;
- (b) an offence against the *Trespass Act 1987*.

### **Part 3 Trespassing offences**

#### **13 Trespass – entering or remaining without authority**

- (1) A person commits an offence if the person:
  - (a) intentionally enters a place; and
  - (b) is not authorised to enter the place.

Maximum penalty: 20 penalty units or imprisonment for 6 months.

- (2) A person commits an offence if the person:
- (a) intentionally remains in, on or at a place; and
  - (b) is not authorised to remain in, on or at the place.
- Maximum penalty: 20 penalty units or imprisonment for 6 months.
- (3) Strict liability applies to subsections (1)(b) and (2)(b).

#### **14 Trespass on Crown or other land**

- (1) A person commits an offence if:
- (a) the person intentionally enters land; and
  - (b) the land is Crown land or is land occupied by the Territory, the Commonwealth or a statutory corporation; and
  - (c) a notice is posted on the land clearly warning that trespassing on the land is prohibited.
- Maximum penalty: 20 penalty units.
- (2) Strict liability applies to subsection (1)(b) and (c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if:
- (a) the defendant was not aware of, and could not reasonably be assumed to have been aware of, the notice posted on the land; or
  - (b) the defendant:
    - (i) did not know the land was Crown land, or land occupied by the Territory, the Commonwealth or a statutory corporation; and
    - (ii) entered the land while hunting or in the pursuit of game.

*Note for subsection (3)*

*The defendant has an evidential burden in relation to this defence (see section 43BU of the Criminal Code).*

#### **15 Trespass after direction to leave**

- (1) A person commits an offence if the person:
- (a) is in, on or at a place; and



- (b) is directed under section 9 to leave the place; and
- (c) does not leave the place as soon as reasonably practicable.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person:

- (a) is directed under section 9 to leave a place; and
- (b) returns to and enters the place contrary to section 9(5).

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

## **16 Trespass after warning to stay off**

- (1) A person commits an offence if the person:

- (a) is warned under section 10 to stay off and not enter a place; and
- (b) enters the place contrary to section 10(5).

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the person by whom, or on whose behalf, the warning was given is no longer an occupier of the place entered.

*Note for subsection (3)*

*The defendant has an evidential burden in relation to this defence (see section 43BU of the Criminal Code).*

## **17 Trespass – contravention of court order**

- (1) A person who is ordered under section 12 to stay off a place must not enter the place within the period specified in the order, unless the person is authorised to enter despite the order.

- (2) A person commits an offence if:

- (a) the person is ordered under section 12 not to enter a place; and
- (b) the person intentionally enters the place; and

(c) the entry contravenes the order.

Maximum penalty: 20 penalty units or imprisonment for 6 months.

(3) Strict liability applies to subsection (2)(a) and (c).

## **18 Severe hardship defence**

It is a defence to a prosecution for an offence against section 15(1) or (2), 16(1) or 17(2) if the conduct was reasonable in the circumstances to prevent or mitigate severe hardship to the defendant or others.

*Examples for section 18*

- 1 *Substantial difficulty in obtaining groceries, medication or health related services.*
- 2 *Unreasonable risk to health or safety.*
- 3 *Other hardship that the court considers severe in all of the circumstances.*

*Note for section 18*

*The defendant has an evidential burden in relation to this defence (see section 43BU of the Criminal Code).*

## **Part 4 Police and procedural matters**

### **19 Police power of removal**

A police officer may, without arrest, remove a person and any of the person's property from a place if the officer believes on reasonable grounds that the person has committed, is committing or is about to commit an offence against this Act.

*Notes for section 19*

- 1 *Section 123 of the Police Administration Act 1978 authorises a member of the Police Force to, without warrant, arrest and take into custody any person where the member believes on reasonable grounds that the person is committing, has committed or is about to commit an offence.*
- 2 *Section 23 of the Youth Justice Act 2005 requires a police officer to take all reasonable steps to notify a responsible adult of the arrest or charging of a youth for an offence.*

### **20 Exercise of powers**

(1) A police officer may use reasonable force and assistance in exercising a power under this Act.

- (2) To avoid doubt, a police officer who gives a direction or warning at the request of an occupier of a place is acting in the course of the police officer's duties.

## **21 Multiple offences**

A person may be charged with and found guilty of more than one offence against this Act for a sequence of conduct that constitutes those separate offences.

## **22 Averment**

- (1) An averment may be made regarding facts specified in subsection (2) in a complaint for an offence against any of the following:
- (a) section 14(1);
  - (b) section 15(1) or (2);
  - (c) section 16(1).
- (2) The averment is taken to be evidence in respect of the following facts:
- (a) that a person is, or was at the relevant time, an occupier of a place;
  - (b) that a person is, or was at the relevant time, a police officer;
  - (c) that a direction was given to or received by a person and the contents of the direction;
  - (d) that a warning was given to or received by a person and the contents of the warning.

# **Part 5 Repeals and transitional matters for Trespass Act 2023**

## **Division 1 Repeals**

### **23 Acts repealed**

The following Acts are repealed:

- (a) *Trespass Act 1987* (Act No. 7 of 1987);
- (b) *Trespass Amendment Act 2000* (Act No. 51 of 2000).

## Division 2 Transitional matters

### 24 Definitions

In this Division:

**commencement** means the commencement of Part 2.

**repealed Act** means the *Trespass Act 1987*.

### 25 Direction to leave

Any direction to leave given under section 7 of the repealed Act, that is in effect immediately before the commencement, continues in effect in accordance with its terms and is taken to be a direction under this Act.

### 26 Warning to stay off

Any warning to stay off given under section 8 of the repealed Act, that is in effect immediately before the commencement, continues in effect in accordance with its terms and is taken to be a warning under this Act.

### 27 Offences

- (1) The provisions of the repealed Act, as in force immediately before the commencement, continue to apply to offences against that Act committed before the commencement.
- (2) For subsection (1), an offence is taken to have been committed before the commencement if any of the conduct constituting the offence occurred before the commencement.

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## ENDNOTES

### 1

### KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
Gaz = Gazette  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2

### LIST OF LEGISLATION

#### *Trespass Act 2023 (Act No. 7, 2023)*

|             |   |
|-------------|---|
| Assent date | 6 April 2023                            |
| Commenced   | 1 May 2023 (Gaz G9, 27 April 2023, p 1) |

### 3

### LIST OF AMENDMENTS

|            |                       |
|------------|-----------------------|
| pt 6 hdg   | rep No. 7, 2023, s 35 |
| pt 6       |                       |
| div 1 hdg  | rep No. 7, 2023, s 35 |
| ss 28 – 30 | rep No. 7, 2023, s 35 |
| pt 6       |                       |
| div 2 hdg  | rep No. 7, 2023, s 35 |
| ss 31 – 32 | rep No. 7, 2023, s 35 |
| pt 6       |                       |
| div 3 hdg  | rep No. 7, 2023, s 35 |
| ss 33 – 34 | rep No. 7, 2023, s 35 |
| pt 6       |                       |
| div 4 hdg  | rep No. 7, 2023, s 35 |
| s 35       | rep No. 7, 2023, s 35 |