

1991

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Land (Planning and Environment) Bill 1991

EXPLANATORY MEMORANDUM

Circulated by Authority of

Bill Wood

Minister for the Environment, Land and Planning

LAND (PLANNING AND ENVIRONMENT) BILL 1991

OUTLINE

The Land (Planning and Environment) Bill 1991 ("the Bill") introduces significant reforms to the law relating to planning, environmental assessments and inquiries, heritage and land administration in the Australian Capital Territory.

The Bill replaces existing planning and leasing legislation in force in the Territory, and introduces new law in the areas of heritage and the environment.

The Bill is intended to provide greater community participation in land use matters in the ACT, providing opportunities for public consultation on a wide range of activities. The Bill also provides extensive appeal rights to applicants and third parties. The new processes under the Bill, requiring the recording of applications, approvals and orders, and the imposition of time frames within which various components of land administration procedures are to be completed, will provide greater certainty and efficiencies in land administration.

Part II of the Bill establishes a Territory Planning Authority, constituted by a Chief Planner; gives the Authority the responsibility of preparing, reviewing and amending the Territory Plan; and sets up procedures for varying the Plan. The Plan will include the Heritage Places Register.

Part III of the Bill provides for the commencement and maintenance of a Heritage Places Register, through the process of amendment of the Territory Plan, and constitutes the Heritage Council which will be responsible for advising on, reviewing and maintaining the Register.

Part IV of the Bill, relating to Environmental Assessments and Inquiries, provides a mechanism for consideration and assessment of potential environmental impacts. Provision is made for different levels of assessment and for the establishment of Inquiries, which might extend to any aspect of any proposal.

Preliminary assessments may be made mandatory in the Territory Plan, or initiated by the Environment Minister or other relevant Minister. Decisions to require public environment reports, environmental impact statements and to establish Inquiries also lie with both the relevant Minister and Environment Minister.

Part V of the Bill relates to the administration of Territory Land. Under this Part, the Minister is empowered to grant leases or licences in accordance with less complex procedures than in former leasing legislation, now repealed, but the Bill provides for a more open and accountable means of disposition of land. The Part deals comprehensively with the granting of leases for community or special purposes, and limits the extent to which lessees may speculate in land leased for those purposes.

Part V introduces a new category of land - public land - which will be declared by amendment to the Territory Plan as land subject to specific management objectives outlined in Schedule 1 and administered by the Conservator. Land may only be declared to be public land upon the recommendation of the Conservator.

Under Part V, a person will have access to the review processes available in the Administrative Appeals Tribunal under wider circumstances than previously possible.

Part VI provides for the granting of approvals and making of orders in the circumstances described throughout the Part. The conduct of certain activities, defined as 'controlled activities' in the Bill, will be required to be approved through a public and appellable process, unless expressly excluded by the Bill, the Regulations or the Territory Plan. Controlled activities are set out in Schedule 2.

Part VII contains miscellaneous provisions dealing with the exercise of powers, the imposition of penalties, determination of fees and charges and the making of regulations under the Bill.

Provisions of the Bill are detailed in the Attachment.

FINANCIAL CONSIDERATIONS

While the intended public consultation and third party appeal processes will increase the cost of administering the ACT planning and leasing functions, the community will gain from the more certain process and the statutory time frames for approval. Some additional revenue will result from new and extended application fees, as well as the reforms in respect of community lease transfers.

Estimated resources for the first year of operation, excluding appeals, is \$2.409 million.

Revenue during that period is estimated at \$1.3 million.

CLAUSE NOTES

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PART I : PRELIMINARY**Clause 1 : Short Title**

The legislation may be referred to as the Land (Planning and Administration) Act 1991.

Clause 2 : Commencement

Clauses 1 and 2 will commence when the Bill is notified in the Gazette. All other clauses will commence on a date fixed by the Minister by notice in the Gazette, or automatically after 6 months.

Clause 3 : Crown

This Bill will bind the Crown, and that nothing in the Bill will render the Crown liable to prosecution for an offence.

Clause 4 : Interpretation

Definitions are provided in this clause for the purposes of the Bill as a whole.

PART II : PLANNING**DIVISION 1 : PRELIMINARY****Clause 5 : Interpretation**

This clause defines a number of terms for the purposes of Part II.

Clause 6 : Stages and parts of the Plan

Two further aids to the interpretation of Part II are provided:

- 6(1) a reference to the Plan includes a reference to a stage or part of the Plan
- 6(2) a reference to a draft Plan includes a draft stage or part of the Plan, or a provision within a draft Plan.

DIVISION 2 : TERRITORY PLAN - OBJECT AND EFFECT**Clause 7 : Object**

This clause identifies the object of the Plan and specifies the features which the Plan may include to give effect to that object or the planning principles and policies.

The Plan is to ensure that the people of the Territory have an attractive, safe and efficient environment in which to live, work and have their recreation. Areas of land may be reserved as public land for the purposes specified in clause 192.

The Plan will set out the planning principles and policies for giving effect to that object.

Clause 8 : Effect of Plan

The Territory, the Executive, the Minister or a Territory authority may not do any thing, or authorise any thing, which is inconsistent with the Plan.

Clause 9 : Effect of draft Plan Variations

Subject to clause 11, for a defined or otherwise specified period after a draft variation to the Plan has been published, no action can be taken which is inconsistent with the proposed variation. Where a draft Plan variation is deferred, this clause does not apply during the period of deferral.

Clause 10 : Effect of interim Heritage Places Register

Under clause 54, an interim Heritage Places Register has effect as if it were the Heritage Places Register. Under this clause, an interim Heritage Places Register ceases to have effect if it has not been submitted to the Executive within four months, or other period determined by the Minister, of its submission to the Authority.

**Clause 11 : Draft Heritage Places Register and variations -
lack of effect**

Where a draft Heritage Places Register is made available for public inspection as part of a draft Plan variation under Clause 19, then the draft Heritage Places Register has no effect. However, this clause does not apply to an interim Heritage Places Register.

Clause 12 : Plan not to have retrospective effect

Where the use of land in a particular way pursuant to an estate in land was lawful immediately before the coming into effect of the Territory Plan, the Plan will not make that use unlawful during the term of the estate.

DIVISION 3 : TERRITORY PLAN - ESTABLISHMENT**Subdivision A : Preliminary****Clause 13 : Continuation of Plan**

This clause ensures that the plan established under the Interim Planning Act 1990 continues in effect.

Subdivision B : Preparation of variations of the Plan**Clause 14 : Application**

The general requirements for Plan preparation do not apply to defined land (usually new subdivisions) which is subject to procedures specified in Subdivision D of Part V.

Clause 15 : Preparation of variations

The Authority will prepare variations to the Plan. Variations may be prepared in stages or parts.

Clause 16 : Conservator's recommendations

In preparing a Plan, the Authority is to consider any recommendation from the Conservator.

Clause 17 : Heritage

The Authority is to consider an interim Heritage Places Register submitted to it by the Heritage Council. The clause specifies procedures to include all or part of the Interim Register into the Heritage Places Register as a variation to the Plan.

If the Authority prepares a draft Register which is different to that proposed by the Heritage Council, or prepares a draft Register in the absence of an interim Register, the Authority is to give written notice to the Heritage Council no later than 28 days before it proposes to notify the relevant draft Plan in the Gazette under clause 19. The Authority is to consider a written response from the Heritage Council to its proposal provided that the response is submitted not later than 7 days before the proposed notification.

Clause 18 : Environmental reports and Inquiries

In preparing a draft Plan the Authority will consider any relevant environmental report or the report of any relevant Inquiry. The Minister may direct that an environmental assessment be made, or a panel established to conduct an inquiry into any aspect of a proposed draft Plan variation or a draft Plan variation.

Clause 19 : Public consultation

This clause sets out the public consultation procedures to be followed by the Authority before submitting a draft Plan to the Executive. The Authority may protect the identity of persons making comments, and may exclude, on public interest grounds, any part of a draft Plan or background papers from the documents made available for public inspection.

Certain procedures need not be followed if the Executive is satisfied that a draft Plan has the sole purpose of correcting a formal or technical error, but the Authority will obtain information about the public attitude to the draft variation.

Clause 20 : Consultation with the National Capital Planning Authority

The Authority must consult with the NCPA before submitting a draft Plan variation to the Executive for approval.

Clause 21 : Public inspection of comments

This clause imposes an obligation on the Authority to make comments, submitted in response to a notice under clause 19, available for public inspection.

The Authority may, on request by a person providing comments, protect the identity of that person when making the comments available for inspection.

Clause 22 : Revision, deferral or withdrawal of draft Plan

On the expiration of the period for public comment, the Authority may revise the draft Plan variation, defer further action for a specified period or withdraw the draft Plan. If deferred or withdrawn, a notice to this effect must be published, and a similar advice published when the draft Plan is revived.

In revising, deferring or withdrawing a draft Plan, the Authority must consider comments from the public and the NCPA.

Subdivision C : Executive approval and consideration by the Legislative Assembly.

Clause 23 : Application

This Subdivision does not apply to a Plan variation involving Defined Land.

Clause 24 : Submission of draft Plan variation to Executive

After the expiration of the period for public comment, the draft Plan variation will be submitted to the Executive with the documents specified in this clause.

Clause 25 : Executive powers

The Executive will approve the draft Plan variation or return it to the Authority together with written directions to conduct further specific consultation, to give consideration to relevant reports, or to revise, defer or withdraw the draft Plan variation. The Executive may revoke an approval of a Plan variation at any time before it is laid before the Assembly. Notice of that revocation is to be published in the Gazette.

Clause 26 : Return of draft Plan variation to the Authority

The Authority is to comply with any direction of the Executive regarding a returned draft Plan variation. This clause also specifies the circumstances under which a returned draft Plan variation is to be revised and/or resubmitted.

Clause 27 : Notice of revival of deferred draft Plan variation

This clause sets out the procedures for reviving a draft Plan previously deferred by the Authority in compliance with a direction under subparagraph 25(1)(b)(v).

Clause 28 : Consideration of Plan variation by Legislative Assembly

Within 5 sitting days of its approval, the Plan variation is to be laid before the Assembly together with such documents as this clause requires. If not laid before the Assembly within 5 sitting days, the Plan variation does not come into effect.

If a motion to reject a Plan variation, or part of a Plan variation, is given in the Assembly, and that motion has not been called on or has been called on and moved but not withdrawn or otherwise disposed of, the Plan variation is deemed to have been rejected and, under subclause 28(7), does not come into effect.

Where a Plan variation, or a provision of it, has not been rejected, notice of the commencement of the Plan variation is to be given in the Gazette.

If the whole of a Plan variation is rejected, the Minister is required to publish a notice in the Gazette to that effect.

If only part of a Plan variation is rejected, the Minister is to notify the commencement of the remaining provisions in the Gazette.

The Minister will make the Plan or relevant portions of the Plan available for public inspection or purchase.

Clause 29 : Commencement

The Plan will come into effect on the date specified in the notice under clause 28.

Subdivision D : Plan Variations - defined land

Clause 30 : Interpretation

This clause provides a definition of "defined land".

Clause 31 : Plan variations in relation to defined land

On the approval of the subdivision of defined land, the Authority will vary the Plan to specify the purpose for which the land is to be used. The clause also specifies the method of varying the Plan in relation to defined land, and the conditions to apply to the variation.

The clause also specifies that a notice is to be published in the Gazette and a daily newspaper, specifying the variation, the date of effect and providing a map of the relevant area.

DIVISION 4 : AUSTRALIAN CAPITAL TERRITORY PLANNING AUTHORITY

Subdivision A : Establishment, constitution, functions and powers.

Clauses 32 to 41 provide for the establishment of the Australian Capital Territory Planning Authority, its constitution, functions and powers. The Authority is constituted by the Chief Planner and is an agent of the Crown. The following clauses are of particular interest.

Clause 35 : Functions

The Authority has a wide range of functions, including the administration and review of the Plan and proposing variations to the Plan. The Authority may, with approval, perform planning services elsewhere in Australia and overseas.

The Authority is also required to perform its functions in compliance with any directions of the Executive.

Clause 36 : Executive policy directions

The Executive may give the Authority general directions about the policies and objectives it should pursue in the performance of its functions, and general directions to review the Plan or a specified part of the Plan. The Minister will publish in the Gazette the particulars of any direction given.

Unless the directions are published within 14 days of being made, they cease to have effect.

Particulars of any directions given to the Authority in a financial year are to be published in its annual report for that year.

The provisions of clause 36 do not apply to a direction given under clause 25.

Subdivision B : Chief Planner

Clauses 42 to 49 provide for the appointment, the terms of employment, acting arrangements, resignation and termination of appointment of the Chief Planner.

DIVISION 5 : MISCELLANEOUS

Clause 50 : Challenge to validity of provisions of Plan

Any legal proceedings questioning the validity of a provision of the Plan are to be commenced within 3 months of the commencement of the provision.

PART III : HERITAGE

DIVISION 1 : PRELIMINARY

Clause 51 : Interpretation

Definitions for the purposes of this Part are provided.

Clause 52 : Interim Registers - Interpretation

This clause clarifies references to an interim Heritage Places Register.

DIVISION 2 : HERITAGE PLACES REGISTER

Clause 53 : Content of Heritage Places Register

The Heritage Places Register is to identify heritage places and their significance and indicate the particular requirements to ensure the continuation of that heritage significance. The Register will also specify any restricted information relating to Aboriginal places.

DIVISION 3 : INTERIM HERITAGE PLACES REGISTER**Subdivision A : Effect****Clause 54 : Effect of interim Registers**

Where there is no Heritage Places Register, the interim Heritage Places Register has effect as if it were the Heritage Places Register.

54(2) Where the interim Heritage Places Register is in the form of a variation to the Heritage Places Register, the Executive, a Minister or a Territory Authority are prevented from doing anything which is inconsistent with the Register during the period that the variation is being considered.

54(3) The term "defined period" is explained for the purposes of the interim Heritage Places Register.

Subdivision B : Preparation, notification, submission of Registers**Clause 55 : Criteria for preparation**

The Heritage Council will apply criteria determined under this clause in assessing the heritage significance of a place. The Council is also required to take into account all measures which are prudent and feasible to conserve the heritage significance of a place.

Clause 56 : Ministerial directions and declarations under Division 5

Where directed by the Minister under paragraph 68(1)(a) or 72(1)(a), the Heritage Council is to notify an interim Heritage Places Register listing.

56(2) Where the Minister has declared under paragraph 68(1)(b) or 72(1)(b) that a place should not be registered, the Council will not notify an interim Heritage Places Register which would effectively list that place in the Heritage Places Register.

Clause 57 : Public consultation

57(1) The Heritage Council will obtain and consider information from appropriate sources in the community about proposals for the interim Heritage Places Register.

57(2) Before notifying an interim Heritage Places Register, the Council must consult with, and consider the views of, persons whose interests would be affected by a proposed listing.

- 57(3) Where the Minister directs, under subclause 56(1), that an interim Heritage Places register is to be notified, clause 57 does not apply.

Clause 58 : Application for inclusion of places in an interim Register

A lessee of land on which a place is located may apply to the Heritage Council for consideration of the place for inclusion in the interim Heritage Places Register.

- 58(2) An application is to be accompanied by a statement from the lessee supporting the listing, and the determined fee.
- 58(3) After considering the application, the Heritage Council may approve or refuse the application and will notify the lessee of its decision in accordance with subclauses 58(4) & (5).
- 58(6) The Heritage Council may prepare interim Heritage Places Registers in its own right. Application from a lessee is not necessary.

Clause 59 : Public notification

- 59(1) Publication of an interim Heritage Places Register is to be notified in the Gazette and a daily newspaper. The required content of the notice is set out in this subclause.
- 59(2) Copies of the interim Heritage Places Register will be made available for public inspection. They will not contain restricted information about an Aboriginal place or object [see subclause 59(3)].
- 59(4) Failure to comply with paragraphs 59(1)(a) or (c), or subclauses 59(2) or 59(3) does not affect the validity of a decision to include a provision in an interim Heritage Places Register.

Clause 60 : Notification of lessees and occupiers

The Heritage Council will advise each affected lessee and/or occupier of land affected by a decision to include a provision in an interim Register. The required content of the notice is set out in this clause. Failure to provide notice in the required form will not invalidate a decision to include a provision in an interim register.

Clause 61 : Revision of interim Registers

- 61(1) The Heritage Council may amend an interim Register after its notification, to correct formal errors or to remove a provision, except where subclause 56(1) applies. Under subclauses 61(1) and (2), details of such revisions must be notified in the Gazette and a newspaper.

- 61(3) The contents of a notice under paragraph 61(1)(b) are set out.
- 61(4) The Heritage Council will make copies of the revised interim Register available for public inspection.
- 61(5) Where revisions are made to the interim Register under paragraph 61(1)(b) each lessee and occupier of land affected by the decision will be notified of the revision. The notice will include information specified in subclause 61(3).
- 61(6) A decision of the Heritage Council to revise a provision of an interim Register under paragraph 61(1)(b) is not invalidated by the failure to comply with subclauses 61(2), (3), (4) or (5).

Clause 62 : Submission of interim Register to the Authority

The Heritage Council will forward interim Register listings to the ACT Planning Authority 28 days after Gazette notification, provided there has been no appeal to the Tribunal. Subclauses 62(2), (3), (4) and (5) set out the circumstances in which an application for review of a decision in the Tribunal will affect the submission of an interim Register to the Authority.

DIVISION 4 : ACQUISITION OF HERITAGE PLACES AND OBJECTS

Clause 63 : Acquisition

The Executive may acquire heritage places and related objects which are in the Heritage Places Register on just terms, where the place has substantial heritage significance and acquisition is the most prudent and feasible means of conserving its significance. Before acquiring a place, the Executive must obtain the views of the lessee, the Heritage Council and any relevant Aboriginal organisation. Where an object is to be acquired, the owner and possessor of the object must also be consulted.

Clause 64 : Notice of acquisition

Following a decision of the Executive to acquire a place or object, the Minister will notify the lessee within 28 days, and will include in that notice information about the lessee's right of appeal to the Tribunal. Failure to comply with this clause does not affect the validity of a decision to acquire a place or object.

DIVISION 5 : ABORIGINAL HERITAGE**Subdivision A : Preliminary****Clause 65 : Interpretation**

Definitions for the purpose of this Division are provided.

**Subdivision B : Reporting discoveries of unregistered
Aboriginal places****Clause 66 : Reports**

Discoveries of unregistered Aboriginal places are to be reported within 7 days of discovery, where there are reasonable grounds to conclude that the place has not already been registered. This clause sets out the required content of such a report. The reporting requirement does not apply to people with traditional Aboriginal affiliations with a place, or to persons who believe on reasonable grounds that a declaration under paragraph 68(1)(b) or 72(1)(b) is in force, or that a place has previously been registered.

A penalty of \$500 applies for failure to comply with this clause.

Clause 67 : Aboriginal heritage discoveries - consideration of reports

The Minister is required to act on a report made under clause 66. Where the place is registered, or has previously been registered, details of that listing, including restricted information and a statement of the effect of that listing, are to be provided to the lessee and occupier of the land on which the place was discovered. If the place has never been registered, the Minister is required to obtain a report from the Heritage Council within 21 days about the heritage significance of the place.

67(2) In considering the heritage significance of the place, the Heritage Council is required to take into account the views of the persons referred to in this subclause.

Clause 68 : Aboriginal heritage discoveries - Ministerial directions and declarations

Within 14 days of receiving the report of the Heritage Council under clause 67, the Minister will either direct the Heritage Council to notify the place as an entry in the interim Heritage Places Register, or declare that the place is not to be registered. Such a decision is to be notified in the Gazette.

68(1)(b) If a place is not to be registered, the Minister will notify the lessee or occupier on whose land the place was discovered, the person who reported the place and any relevant Aboriginal organisation.

68(3) In making a decision under this clause, the Minister will consult with the persons described in paragraph 68(1)(b) and take into account their views and the views of the Heritage Council. This will assist the Minister in assessing the heritage significance of the place and the effect of its registration.

68(4) The same consultation provisions as detailed in clauses 59 and 60 apply to this decision to register a place.

Subdivision C : Protection of unregistered Aboriginal heritage

Clause 69 : Damaging unregistered Aboriginal places

A person may not knowingly disturb, damage or destroy or permit to be disturbed, damaged or destroyed an unregistered Aboriginal place, unless the place has been previously registered and that registration has been cancelled. A penalty of \$5,000 applies.

69(2) It is not an offence, where a person does not believe that the place is an Aboriginal place, or believes on reasonable grounds that the Minister has declared the place will not be registered under paragraph 68(1)(b) or 72(1)(b).

Clause 70 : Orders for the protection of unregistered Aboriginal places - application of Part VI

The Minister may make an order under Part VI ('Approvals and Orders') stopping or preventing the disturbance, damage or destruction of an unregistered Aboriginal place.. Orders may not be made in relation to unregistered Aboriginal places which the Minister has declared are not to be registered, or which have been removed from the Heritage Places Register. Under subclause 70(6), orders remain in force for up to 35 days.

70(4) Before making an order, the Minister will consider whether the activity is likely to adversely affect the significance of the place.

70(5) The formal requirements of an order under this clause are set out, and are in substitution of those under subclause 254(5).

Clause 71 : Orders - reports by Heritage Council

Where an order has been issued under clause 70, the Minister will direct the Heritage Council to report within 21 days about the heritage significance of the place. The same consultation arrangements apply here to the Heritage Council as under clause 67.

Clause 72 : Orders - Ministerial directions and declarations

Within 14 days of receiving the report of the Heritage Council under clause 71, the Minister will either direct the Heritage Council to notify the place as an entry in the interim Heritage Places Register, or declare that the place is not to be registered. Such a decision is to be notified in the Gazette.

- 72(1)(b) If a place is not to be registered, the Minister will notify the lessee or occupier on whose land the place was discovered and any relevant Aboriginal organisation.
- 72(3) In making a decision under this clause, the Minister will consult with the persons described in paragraph 72(1)(b) and take into account their views and the views of the Heritage Council. This will assist the Minister in considering any alternative to the activity in relation to which the order is in force.
- 72(4) The same consultation provisions as detailed in clauses 59 and 60 apply to this decision to register a place.

Subdivision D : Compensation claimsClause 73 : Interpretation

The term "compensation" is defined for the purposes of this Subdivision.

Clause 74 : Application

This Subdivision applies to Aboriginal places in the circumstances set out in this clause.

Clause 75 : Right to compensation

The circumstances in which compensation is payable in relation to Aboriginal places are set out. Applications for compensation must be made within 1 year. No compensation will be payable in the circumstances described in subclause 75(3).

Clause 76 : Loss for which compensation is recoverable

The circumstances under which compensation is payable, and the nature of loss which is and is not to be considered in assessing a claim for compensation, are described.

Clause 77 : Amount of compensation

The Minister will determine the level of compensation to be paid by the Territory.

- 77(2) Applicants are entitled to ask the Minister to review the level of compensation in accordance with a determination of a valuer appointed by agreement between

the Minister and the applicant to provide an independent valuation of loss, or in a manner agreed between the Minister and the applicant.

Clause 78 : Consultation with applicants

The Minister will consult with the applicant for compensation and consider the applicant's views before reaching a decision.

Clause 79 : Notice of decisions about compensation

The Minister will give the applicant written notice of a decision on compensation within 60 days of receiving the application. The applicant may appeal to the Tribunal against a refusal to grant any compensation..

Subdivision E : Consultation in relation to Registers

Clause 80 : Consultation with Aboriginal organisations

The Heritage Council, in preparing or revising an interim Register relating to Aboriginal places, will consult with and consider the views of any relevant Aboriginal organisation.

80(3) "Aboriginal place" is defined for the purposes of this section.

Subdivision F : Restricted information

Clause 81 : Restricted information

The Minister may declare information about the location and nature of Aboriginal places to be restricted. This will follow consultation with the Heritage Council and any relevant Aboriginal organisation. A copy of this declaration will be provided to the lessee or occupier of the land to which the declaration relates, the Heritage Council and any relevant Aboriginal organisation.

81(4) The lessee or occupier of the land to which a declaration applies may appeal to the Tribunal about the Minister's decision.

Clause 82 : Publication of restricted information by public officials

The purpose of this clause is to prevent the publication of restricted information by public officials other than in the circumstances set out in this clause.

Clause 83 : Publication of restricted information generally

The publication of restricted information on Aboriginal places is generally prohibited. A penalty of \$500 applies for publication without approval.

83(2) The Heritage Council will, upon application, approve the publication of restricted information where publication

would not have an adverse effect on Aboriginal tradition or the heritage significance of the place. The formal requirements of an application are set out in subclause 83(3).

83(4) The applicant may appeal to the Tribunal against the Heritage Council's decision to refuse an application.

Clause 84 : Access to restricted information

The Heritage Council will, upon application, allow the lessee or occupier of land, or a person interested in buying or selling that land, to have access to restricted information relevant to the conservation and use of an Aboriginal place. The formal requirements of an application are set out in subclause 84(2).

DIVISION 6 : ADMINISTRATIVE REVIEW

Clause 85 : Review of decisions

The circumstances where appeals to the Tribunal are available in relation to this Part are described.

DIVISION 7 : PUBLIC ACCESS TO HERITAGE INFORMATION

Subdivision A : Information about administrative action

Clause 86 : Application

The documents which are affected by this Subdivision are described.

Clause 87 : Searching administrative records

A person may inspect a document to which this Subdivision applies, except any part of a document which contains restricted information, or which the Minister has declared is not to be made available for public inspection.

87(4) The Minister may only restrict public inspection under subclause 87(3) where the information relates to the personal or business affairs of a person and is given in confidence, and where its publication would not be in the public interest.

Subdivision B : Access to Heritage Registers

Clause 88 : Searching the Heritage Registers

A person may inspect either Register, other than a part of a Register containing restricted information.

88(3) On payment of the determined fee, the Heritage Council will produce a certificate indicating the status of a place in a Register.

88(4) The terms "interim Register" and "Register" are defined.

DIVISION 8 : AUSTRALIAN CAPITAL TERRITORY HERITAGE COUNCIL

Subdivision A : Preliminary

Clause 89 : Interpretation

Definitions are provided for the purposes of this Division.

Subdivision B : Establishment, functions and powers

Clauses 90 to 109 establish the Australian Capital Territory Heritage Council, set out its functions and powers and provide for the terms and conditions of appointment of members.

Clause 91 : Functions

The functions of the Council are to:

- (a) advise the Minister about criteria for the determining the heritage significance of places and objects, incentives for the conservation of heritage places and objects, promotion of public awareness and other matters in relation to heritage;
- (b) advise Territory authorities, at their request, as above;
- (c) prepare an interim Heritage Places Register and an interim Heritage Objects Register, and variations to those Registers; and
- (d) other functions as conferred on the Council by this Bill or another Act.

Clause 92 : Ministerial directions

The Minister may direct the Council about the policies and procedures it should pursue in performing its functions, or to review the Heritage Place Register or the Heritage Objects

Register. Those directions must be published in the Gazette within 14 days.

92(3) The Council is required by this subclause to comply with those directions.

92(4) All Ministerial directions in a year are to be published in the Council's annual report for that year.

PART IV : ENVIRONMENTAL ASSESSMENTS AND INQUIRIES

DIVISION 1 : PRELIMINARY

Clause 110 : Interpretation

This clause provides definitions relating to the interpretation of this Part, and includes detailed definitions of "Environmental Impact" and "relevant Minister".

Clause 111 : Proponents

The relevant Minister or the Environment Minister, may designate a person or Territory authority to be the proponent in relation to a defined decision. Unless that Minister considers that the public interest requires otherwise, this will be the person or authority whose interests are most directly affected by the decision.

DIVISION 2 : PRELIMINARY ASSESSMENTS

Clause 112 : Directions

The proponent may be required by the relevant or Environment Minister to prepare a preliminary assessment of the environmental impact of the relevant proposal. The notice to the proponent will specify the content of the preliminary assessment (see clause 114).

Clause 113 : Mandatory preliminary assessments

If prescribed by the Plan, the proponent will be required to prepare a preliminary assessment under clause 112.

Clause 114 : Content

A preliminary assessment will consist of such matters as are specified in the notice under clause 112.

Clause 115 : Submission to Minister

A preliminary assessment required under clause 112 will be forwarded to the Environment Minister.

115(2) If the Environment Minister is not the relevant Minister, the Environment Minister will forward the preliminary assessment to the relevant Minister.

Clause 116 : Public inspection

The proponent will make copies of a preliminary assessment available for public inspection or purchase, at a price not exceeding that set by the Environment Minister, during office hours at places and times that are specified in notices in the Gazette and in a daily newspaper published and circulating in the Territory.

116(5) The proponent may appeal to the Tribunal against the maximum price fixed by the Minister for the purchase of a preliminary assessment.

Clause 117 : Exclusion of material

Material contained in a preliminary assessment may be excluded from public inspection in certain circumstances. Subclause 117(1) sets out the conditions for exclusion.

117(2) Where material has been excluded from a preliminary assessment, each copy of that preliminary assessment made available to the public will include a statement that an unspecified part has been excluded for the purpose of protecting confidentiality.

DIVISION 3 : ASSESSMENTS**Subdivision A : Form and Content**Clause 118 : Form

Unless otherwise specified in the Bill or a subordinate law, an Assessment will consist of a public environment report or an environmental impact statement, together with the report required by clause 130 which evaluates the report or statement.

Clause 119 : Content of public environment reports and environmental impact statements

Public environment reports and environmental impact statements are to include matters that are prescribed and those that are directed under clause 122.

Subdivision B : Direction of Assessments

Clause 120 : Decisions to direct assessments

After a preliminary assessment has been submitted, and if, in the opinion of the relevant Minister, the environmental impact of the proposal will be of sufficient significance, the relevant Minister may direct that an Assessment of the proposal be made.

120(2) In making this decision the Minister will consider the preliminary assessment, the report of any meeting under clause 127 and whether any aspect of the environmental impact of that proposal is (or could be) the subject of an Inquiry or another Assessment or any environmental assessment action taken by or for the Commonwealth, a State or the Northern Territory.

120(3) This clause does not apply where a Minister is required under an Act or subordinate law to direct that an Assessment be made.

Clause 121: Environment Minister's power to direct Assessments

If a Minister other than the Environment Minister has the power under an Act or subordinate law to direct that an Assessment be made, the Environment Minister also has those powers.

Clause 122 : Directions

A direction by the Minister that an Assessment be made in relation to a defined decision may set out the form of the Assessment, the matters to be included in the Assessment, the emphasis to be given to those matters, the way in which the Assessment is to be prepared, or details of any related proposal which enable the proponent to assess the combined effect of the proposals. The Environment Minister and the relevant Minister will consult on the content of the direction [see subclause 122(2)].

122(3) The Minister is required to publish, in the Gazette and in a daily newspaper, a notice specifying the name of the proponent, the matters specified in the direction and the name of any consultant nominated to assist in preparing the Assessment.

122(4) The Minister may direct the proponent to engage a consultant. Consultants may be specified by the Minister only in accordance with prescribed criteria.

Subdivision C : Preparation, evaluation and consideration by the Legislative Assembly

Clause 123 : Public environment reports - preparation

The Environment Minister may direct a proponent, in relation to a public environment report, to undertake specified

consultation, and after any such consultation to make the report available for public inspection. Subclause 123(2) compels the proponent to comply with such a direction.

123(3) This clause does not apply in relation to a public environment report prepared for the purposes of an Assessment which will be a background paper within the meaning of Part II, or is notified together with a draft plan of management under Division 5 of Part V.

Clause 124 : Environmental impact statements - consultation and public inspection

The proponent in relation to an environmental impact statement is to publish a notice, approved by the Environment Minister, in the Gazette and in a daily newspaper. The notice will state that copies of the draft environmental impact statement are available for public inspection and purchase, inviting interested persons to submit comments about the draft. The proponent is responsible for ensuring that the draft statement is available for inspection and purchase.

124(5) The proponent may appeal to the Tribunal against the maximum price fixed by the Minister for the purchase of a draft environmental impact statement.

124(6) This clause does not apply in relation to a environmental impact statement prepared for the purposes of an Assessment which will be a background paper within the meaning of Part II, or will be notified together with a draft plan of management under Division 5 of Part V.

Clause 125 : Environmental impact statements - consideration of relevant comments and reports

When preparing an environmental impact statement the proponent will consider any written comments from any person or Territory authority, and any reports related to the environmental impact of the relevant proposal.

Clause 126 : Submission of reports and statements to the Environment Minister

The proponent will submit the public environment report or environmental impact statement to the Environment Minister together with such documents as are required by this clause.

Clause 127 : Consultation

The Environment Minister may convene a meeting with the proponent and any other person that the Minister believes has an interest, or would be directly affected by the proposal, at any time after the instruction to prepare a public environment report or an environmental impact statement. The purpose of the meeting is to discuss ways of reducing or eliminating any potential environmental impact or to clarify the proposal or concerns about the proposal.

127(2) The Environment Minister will give a written report of the meeting to each participant stating the outcome of the meeting and including recommendations which the Environment Minister intends to include in his or her report under clause 130.

127(3) The report specified in subclause 127(2) must be made available for public inspection if the meeting recommends that a proposal be varied.

Clause 128 : Further information

The Environment Minister may request that the proponent provide further information in relation to the proposal, report or statement.

128(2) The proponent is required to provide the specified information to the Environment Minister.

Clause 129 : Further revision

The Environment Minister may request the proponent to revise the report or statement in consideration of specified matters. On receipt of such a notice, the proponent may revise the report or statement for resubmission to the Environment Minister or submit a written report stating the reasons why the report or statement has not been revised.

Clause 130 : Evaluation by Environment Minister

After submission of a public environment report or an environmental impact statement, the Environment Minister is to prepare a report evaluating it. Where further revision has been requested under clause 129, subclause 130(2) requires the evaluation to be made after the proponent resubmits a report or statement under paragraph 129(3)(a) or submits a report under paragraph 129(3)(b).

130(3) The Minister's report should include the matters set out in this subclause.

Clause 131 : Tabling in the Legislative Assembly and public inspection

Within 6 sitting days of the completion of a report under clause 130, the relevant Minister will lay before the Assembly the relevant Assessment, any notice given under clause 128 or 129 and any report, comment or written information submitted to the Environment Minister under clause 126, 128 or 129.

The material laid before the Assembly under subclause 131(1) is to be made available to the public by notice published in the Gazette and a daily newspaper.

Clause 132 : Exclusion of material

The relevant Minister may exclude material from an Assessment laid before the Assembly or made available for public inspection. Material may be excluded if the information was supplied to the proponent or that Minister in confidence, or its publication would reveal a trade secret, and it would not be in the public interest for that part to be published.

132(2) Where the Minister has caused materials to be excluded from an Assessment, each copy will include a statement that an unspecified part of the Assessment has been excluded for the purposes of protecting confidentiality.

Clause 133 : Exemptions

The Environment Minister may exempt a specified decision or decisions of a specified class from being the subject of an Assessment directed under any Act or subordinate law or declare that specified provisions of this Division will not apply to a specified Assessment or class of Assessments.

133(2) Exemption must be by an instrument which is a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Subclauses 133(3) and 133(4) modify the effect of the Subordinate Laws Act 1989.

133(5) The Environment Minister will publish a notice of the instrument of exemption in a daily newspaper.

133(6) The failure to comply with subclause 133(5) will not affect the validity of an instrument under this clause.

DIVISION 4 INQUIRIES

Subdivision A Establishment of panels; terms of reference

Clause 134 : Constitution

When the relevant Minister, in relation to a defined decision, decides to establish a panel to inquire into a proposal, that Minister will appoint a person or persons to form a panel to conduct that Inquiry. One person of the panel is to act as presiding member.

Clause 135 : Combined Inquiries

Where there are two or more proposals, being the subject of two or more defined decisions that have substantially interconnected effects, the Minister may establish one panel to conduct an Inquiry into the potential combined effect of those proposals.

Clause 136 : Remuneration

Each member of a panel will be paid the remuneration determined by the relevant Minister.

Clause 137 : Terms of reference

The relevant Minister will determine the terms of reference of an Inquiry.

137(2) The terms of reference will specify the defined decision, require the panel to assess the proposal and specify a period within which the panel is to report. They may also include instructions to the panel to investigate specified aspects of the proposal or consider any specified report.

137(3) The relevant Minister may vary the terms of reference of the Inquiry, by notice in the Gazette.

Clause 138 : Notification

The relevant Minister, in relation to an Inquiry, will publish a notice in the Gazette specifying the membership of the panel, its terms of reference, the period within which the panel is required to report and such other matters the Minister considers necessary.

Subdivision B Inquiry Reports

Clause 139 : Inquiry Reports

The panel will report its findings and recommendations to the relevant Minister in accordance with the terms of reference specified under clause 137.

Clause 140 : Tabling in the Legislative Assembly and public inspection

The relevant Minister is to lay a copy of the report of the panel's findings and recommendations before the Assembly within 6 sitting days of receiving it, and make copies of the report available to the public by notice in the Gazette and in a daily newspaper.

Clause 141 : Exclusion of material

Where a panel has expressed in a report an opinion that material should be excluded from the report tabled in the Assembly, or made available to the public or for public inspection, then the relevant Minister may exclude that part of the report. Material may be excluded if the information was supplied to the panel in confidence, or its publication would reveal a trade secret, and it would not be in the public interest for that part to be published.

141(2) Where the Minister has caused materials to be excluded from a report, each copy will include a statement that

an unspecified part of the report has been excluded for the purposes of protecting confidentiality.

Subdivision C Procedures and powers

Clause 142 : Interpretation

The terms "authorised person" and "place" are defined. Subclause 142(2) clarifies references in the Subdivision to an occupier of a place.

Clause 143 : Notice of Inquiry hearings

Before the commencement of an Inquiry, the presiding member of a panel will publish a notice, in the Gazette and in a daily newspaper, stating the subject matter of the Inquiry and the time and place where the Inquiry is to commence.

Clause 144 : Public hearings

A panel will conduct its Inquiry in public, except where the panel directs under subclause 144(2) that an Inquiry, or any part of an Inquiry, be held in private. In this case, after considering the matters referred to in subclause 144(3), the panel may issue directions on who may be present during any private hearings, or prohibiting or restricting the publication of evidence or of matters contained in documents lodged with the Inquiry. The panel may also prohibit or restrict disclosure to any specified person of such evidence or such matters.

144(4) The provisions of this clause may also apply to a hearing convened under clause 146.

Clause 145 : General procedure

A panel will not hold hearings in an unduly formal manner and is not bound by the rules of evidence. The panel may inform itself in any way it thinks fit, and may take evidence on oath, may prohibit or regulate cross-examination and, subject to this Subdivision, may determine its own procedures.

145(2) Unless the panel directs otherwise, a person may make a submission to the Inquiry in writing, orally or partly both.

145(3) The panel may adjourn an Inquiry from time to time and from place to place. The Inquiry does not necessarily have to be held in the Territory.

Clause 146 : Special hearings - consultation with interested persons

The panel may hold special hearings, between the proponent and those persons the panel believes to be directly affected by the proposal, to clarify the proposal and discuss ways in which the proposal could be modified in order to reduce or

eliminate any potential environmental impact. The special hearing will be held in an informal manner.

- 146(4) The report of the Inquiry will include a report stating the outcome of the special hearing and any influence the special hearing has had on the panel's recommendations in relation to the proposal.

Clause 147 : Assessments for the purpose of Inquiries

For the purposes of an Inquiry, the relevant Minister may direct that an Assessment be made of the environmental impact of any aspect of the proposal. An Assessment for the purposes of an Inquiry means a public environment report or an environmental impact statement, but does not include a report by the Environment Minister under clause 130. Clauses 126, 127, 128 and 129 apply under this section. Clause 130 does not apply to an Assessment under subclause 147(1).

- 147(5) For the purposes of subclause 131(1), the relevant Minister will lay before the Assembly a copy of an Assessment under subclause 147(1), together with any notice, report, comment or information referred to in subclause 131(1)(b) or (c) within 6 sitting days of receiving the material referred to in this subclause.

Clause 148 : Witnesses - summons to appear

Witnesses may be summoned to attend a hearing of an Inquiry to give evidence and to produce such books and documents as are relevant to any matter at issue in the Inquiry and specified in the summons.

- 148(2) a person served with such a summons will not, without reasonable excuse, fail to comply with the summons. The prescribed penalty is \$5000 and/or 6 months imprisonment.
- 148(3) The Territory will pay a witness to appear at an Inquiry such allowances as are prescribed.

Clause 149 : Victimization of witnesses

This clause protects those persons who are or may be witnesses before an Inquiry from dismissal from employment and from acts of violence or prejudice. Under subclauses 149(3) and (4) such actions by an employer are presumed to be by reason of the employee giving or proposing to give evidence, but this presumption is rebuttable. The prescribed penalty under this clause is \$5,000.00 or imprisonment for 6 months or both.

Clause 150 : Inspection of books and documents

An authorised person may inspect any book or document given in evidence to the Inquiry and make copies. A book or document may be retained by the panel for a reasonable time but the panel will allow the owner of such material reasonable access to it.

Clause 151 : Power of entry

An authorised person may enter any place with the consent of the occupier or in accordance with a warrant issued under clause 152.

151(2) The procedures to be followed before a authorised person or assistant of a panel member can enter any place with the consent of the occupier are set out in this subclause.

Clause 152 : Search warrants

A panel member who believes that it is necessary, for the purposes of an Inquiry, to enter and inspect a place, to search for and inspect any thing or kind of thing may apply to a magistrate for a search warrant.

152(2) The warrant will authorise a person to enter a place, to search for any specified thing or kind of thing and to inspect any such thing.

152(3) A warrant will not be issued unless the magistrate is satisfied there are reasonable grounds for the application, and has received, either orally or by affidavit, further information which is required.

152(4) The formal requirements of a warrant are described.

Clause 153 : Powers of search and inspection

An authorised person may enter a place, in accordance with a warrant, may inspect the place, search for and inspect any thing or require the occupier to give assistance to exercise his or her powers. To refuse to provide assistance, without reasonable excuse will incur a penalty of \$5,000 or 6 months imprisonment or both.

Clause 154 : Obstructing or resisting an authorised person

Wilful obstruction or offering resistance to an authorised person exercising their powers will attract a penalty of \$5,000 or 6 months imprisonment or both.

Clause 155 : Contempt

A person will be in contempt of an Inquiry if any of the acts described in this clause are committed. A penalty of \$5,000 or 6 months imprisonment or both is prescribed.

Clause 156 : Protection of panel members and witnesses

In exercising his or her powers, a panel member is afforded the same protection and immunity as a Justice of the Supreme Court.

156(2) Witnesses have the same protection, and are subject to the same liabilities, as a witness in proceedings of the Supreme Court.

DIVISION 5 ADMINISTRATIVE REVIEW

Clause 157 : Review of decisions

Decisions of the Environment Minister under clauses 116 and 124 may be appealed in the Tribunal.

157(2) Clause 157 is to be read as modifying the operation of section 25 of the Administrative Appeals Tribunal Act 1989.

PART V : LAND ADMINISTRATION

DIVISION 1 : PRELIMINARY

This Part sets out the requirements and procedures for the granting and administration of interests in Territory Land.

Clause 158 : Interpretation

Definitions for the purposes of this Part are provided. In particular, references to a "lessee" include unregistered lessees, and "public carpark" does not include parking areas available for payment of a fee.

158(3) A reference to a 'variation of a lease' includes a situation where a lease is surrendered and another lease granted over all or part of the land comprised in the original lease subject to the provisions that differ from those of the surrendered lease. This does not include land which is defined land within the meaning of Subdivision D.

158(4) A reference to the 'market value of a lease' is a reference to an amount that could be expected to be paid for the lease on the open market if it were sold by a willing but not anxious seller to a willing but not anxious buyer.

Clause 159 : Application

This Part applies to all grants of estates in Territory Land. It does not apply to the transfer by the Territory of a lease held by the Territory.

DIVISION 2 : LEASES

Clause 160 : Granting of leases

The ways in which the Executive may grant a lease of Territory Land are set out.

- 160(2) A lease granted under this clause may contain conditions which require the lessee to develop the land within the lease and surrounding Territory Land, or to provide a bond to secure the lessee's performance.
- 160(3) Where a lease is granted by direct sale under subclause 160(1)(d), it will be subject to such provisions as are agreed between the Executive and the applicant.
- 160(4) Leases granted under paragraph 160(1)(d) may only be granted in accordance with criteria specified under subclause 160(5).
- 160(7) A copy of any lease granted under paragraph will be tabled in the Legislative Assembly within 28 days. Failure to comply with this requirement will not affect the validity of a lease so granted.
- 160(8) Subclause 160(7) does not apply in relation to holding leases granted for the purposes of development of land and its subdivision and resale, or to leases granted under paragraph 160(1)(d) following the development of that land.

Clause 161 : Fees for granting leases

A lease under clause 160 will not be granted unless the determined fee has been paid.

Clauses 162 and 163 : Leases to community organisations, and Special leases

These clauses relate specifically to the granting of leases on particular conditions, other than those set out in clause 160. In both clauses, the Executive will specify criteria for the granting of leases to community organisations, or special leases. It will not be possible to grant a lease under either clause other than in accordance with the criteria.

The Executive will, within 28 days of granting such a lease, table a copy of the lease in the Legislative Assembly,

although the failure to comply with this requirement will not affect the validity of the lease.

Clause 162 : Community leases

A lease may be granted to a community organisation, being an organisation defined in the clause, without charge or for a charge that is less than the market value of the lease.

162(8) A community organisation will not transfer a lease granted under this clause and any purported transfer of such a lease will be of no effect.

162(9) The clause contains nothing which derogates from the power of the Executive to grant a lease of Territory Land to a community organisation other than in accordance with this clause.

Clause 163 : Special leases

The Executive may grant a lease of Territory Land for a charge that is less than the market value of the lease, where the Executive is satisfied that it is desirable to do so to facilitate the development of business or economic development in the Territory.

Clause 164 : Authority to consider proposed leases

The Executive will advise the ACT Planning Authority of its intention to grant a lease of Territory Land, except where land is in a Designated Area (as defined in the Australian Capital Territory (Planning and Land Management) Act 1988).

The Authority will respond within a prescribed period, advising that the lease can be granted as proposed, that it can be granted subject to the conditions contained in the instrument, or that it could not be granted. In reaching its decision, the Authority is required to consider only those matters set out in subclause 164(4). The Authority is also limited in the conditions it can specify in relation to the grant of a lease. The kinds of conditions are set out in subclause 164(5).

Where the Authority specifies conditions or considers that the lease could not be appropriately granted it must, under subclause 164(6), set out the reasons for reaching such a decision in the instrument.

Where the Authority has advised that the lease may appropriately be granted the Executive may, under paragraph 164(7)(a), grant the lease in accordance with the instrument and any conditions it may contain.

If the Authority has not advised within the prescribed period, the Executive may, under subclause 164(8), grant the lease as proposed in the notice.

Subclauses 164(9) and 164(10) provide that only the Executive, or a Minister acting on behalf of the Executive, may grant a lease that does not accord with the conditions set out in the instrument, or where the Authority has advised that the lease could not appropriately be granted.

Clause 165 : Inquiries and Assessments in relation to the granting of leases

The Executive may direct that an Inquiry, into whether the proposed lease should be granted, or an Assessment into the possible environmental impact of a decision to grant a lease, be conducted.

165(2) The lease will not be granted until such time as the Inquiry or Assessment has been completed and the proposed lease conditions reviewed in the light of such reports as are received.

Clause 166 : Eligibility for certain classes of leases

Limitations may be placed on the eligibility for the grant of, and the transferability of, particular classes of lease.

166(1) The Executive may declare by instrument a class of leases to which this clause applies and specify criteria for determining a person's eligibility to hold such a lease.

166(3) A lease to which this clause applies will not be granted to a person who does not satisfy the eligibility criteria. Failure to comply with this requirement will not affect the validity of the lease.

166(6) A lessee of a lease to which this clause applies will not assign or transfer, sublet or part with possession any of the land comprised in the lease without the consent of the Executive and any such arrangement entered into will be of no effect. The Executive will not consent unless it is satisfied that the person to whom the lease will be transferred, assigned, granted or given satisfies the eligibility criteria.

Clause 167: Executive not bound to grant a lease

The Executive will not be bound to grant a lease, and where applications have been invited subject to conditions and a lease has not been granted, fresh applications may be invited subject to the same or other conditions.

Clause 168 : Payment for leases

A lease of Territory land will not be granted for payment that is less than the market value of the lease, except for leases granted under paragraph 160(1)(d) or clauses 162, 163, 170 or 171.

Clause 169 : Failure to accept and execute lease

Where a person who is entitled to the grant of a lease fails to accept or execute the lease or pay any amount required to be paid before being granted the lease, the Executive may terminate his or her right to the grant of the lease.

169(2) The instrument will specify the grounds on which it is given and state when it is to take effect.

169(5) A person whose right to the grant of a lease has been terminated in accordance with this clause will not have any claim for compensation for moneys paid in respect of the grant of the lease.

Clause 170 : Grant of further lease for residential purposes

Where the term of a residential lease is to expire within 30 years, the lessee applies to have the lease renewed, neither the Territory nor the Commonwealth requires the land for a public purpose, and the lessee pays the determined fee, a further residential lease of that land will be granted commencing on the day of the grant of the new lease.

Clause 171 : Grant of further lease for purposes other than residential or rural purposes

Where the lessee of a lease which has not been granted for residential or rural purposes, and which is to expire within 30 years, applies for a grant of a further lease, the lessee will be granted a further lease of the land to commence on the day of the grant of the new lease if neither the Territory nor the Commonwealth requires the land for a public purpose, it is not proposed to allow the land to be used for purposes other than for those which it is presently used, any prescribed requirements for the grant of the further lease applied for are satisfied, all rent due under the existing lease is paid, and the lessee pays the determined fee.

Clause 172 : Lessee's rights in respect of improvements

Lessees of leases upon which there are improvements may be compensated for those improvements, where a lease expires, or is terminated or surrendered, in the circumstances set out in this clause. Full compensation will not apply to leases current at the date of commencement of this Bill which preclude or limit payments for improvements.

172(1) The terms "improvement" and "lessee" are defined.

172(2) If, on the expiration of the term of a lease upon which there are improvements, the lessee is granted a further lease of the land or part of that land then, he or she will not be liable to make any payment to the Executive for those improvements.

- 172(3) Subject to subclause 172(4) and (8), if on the expiration of the term of a lease upon which there are improvements, the lessee is not granted a further lease of the land or is granted a lease of only part of the land, then the Executive will pay the lessee for those improvements as is set out in the subclause.
- 172(4) Where, prior to the expiration of the term of the lease, the Executive declares all or part of the leased land to be available for lease and the current lessee does not, within six months after the expiration of the term of the lease, elect to take a further lease of the land, there will be deducted from the amount payable to the lessee an amount reasonably incurred by the Executive in granting a lease of all or part of that land to another person.
- 172(5) Where a lease is terminated or surrendered, compensation will be payable under this clause as though the lease had expired. This subclause applies only if the building covenant in the lease has been complied with, and costs of the termination or surrender will be deducted from the amount paid.

Clause 173 : Determination of value of improvements

- 173(1) The terms "lessee", "market value" and "prescribed day" are defined for the purposes of this clause.
- 173(2) Where compensation is payable under clause 172, the Minister will determine, as soon as practicable, the market value of improvements on the land.
- 173(3) Where a lessee is not granted a new lease of all of the land, improvements will be valued as though all of the land had been leased on the same terms as before.
- 173(4) Where a lease is terminated or surrendered, improvements will be valued as though the lease had not been terminated or surrendered.

Clause 174 : Land to be used for the purpose for which it was leased

Leased Territory Land will only be used for a purpose authorised by the lease.

Clause 175 : Variation of rent

Where the rent payable under a lease has been varied, notice of the variation will be given to the lessee in writing by post. The variation will come into operation 28 days after the day on which the notice is given, or on a later day if specified in the lease.

Clause 176 : Review of variations of rent

Where the rent payable under a lease is varied and the lease does not include a provision for arbitration of differences between parties as to variation of the rent, the lessee may, within 28 days of receiving a notice under subclause 175(1), request that the variation be reviewed.

176(2) A request for a review of the variation does not affect the operation of the variation.

176(3) The Minister may confirm the variation or set it aside and substitute another variation.

Clause 177 : Refund for amount paid for grant of lease

Where a lease of Territory Land is either terminated or surrendered, the Minister may authorise the payment of the amount paid for the grant of the lease less any determined charges. Such payments will not be authorised other than in accordance with the criteria under subclause 177(3).

Clause 178 : Certificates of compliance

Subject to subclause 178(2), the Minister will, on application by the lessee and payment of the determined fee, issue a certificate stating that the building and development provisions of a lease have been fully complied with.

178(2) A certificate under subclause 178(1) will not be issued for a lease granted under the Unit Titles Act 1970 unless the Minister is satisfied that all other leases in the subdivision have also satisfied the building and development provisions, or that the lessee applying for the certificate will not be inconvenienced by the works being carried out in the subdivision.

Clause 179 : Transfer of land subject to building and development provision

A lease which contains a building and development provision may not be transferred or assigned without the consent of the Minister except as provided for under subclause 179(1).

179(2) On payment of the determined fee, the Minister will consent to the transfer or assignment of an interest in a lease if satisfied that the proposed assignee or transferee intends to comply with the building and development provision. The Minister may also require security to be given to ensure compliance with the provision.

Clause 180 : Mortgage of leasehold subject to building and development covenant

Where a lease contains a building and development provision, the lease or an interest in the lease may not be mortgaged

unless the lessee has obtained a certificate of compliance, except as provided for under paragraph 180(b).

180(b) A lease may also be mortgaged to enable the lessee to secure money to acquire the lease, to enable the lessee to repay money borrowed to acquire the lease or to enable the lessee to comply with the building and development provision of the lease.

Clause 181 : Land leased to be held as undivided parcel

Subject to clause 182, the land comprised in a lease will remain as one undivided parcel but, subject to this Part, may be sublet, assigned, transferred or mortgaged.

Clause 182 : Power of lessee to sublet portion of building or land in certain cases

Any portion of a building erected on leased land may be sublet separately from the remainder of the building, subject to the lease and any sublease of the land.

182(2) Any portion of the land that the building is erected on may also be sublet together with a portion of the building, providing the land adjoins the part of the building that is sublet.

DIVISION 3 : VARIATION OF LEASES

Clause 183 : Payments in respect of variation of leases

The Executive will not execute a variation of a lease unless all rent or additional rent has been paid up to the date of the variation. If the variation increases the market value of the lease, the lessee must pay an amount, determined by the Executive, based on the increase in the value of the lease that would result from the variation.

Clause 184 : Advice of rent payable on variation of a lease

Where the Executive agrees to the variation of a lease, it will determine the amount of rent to be paid by the lessee, and give the lessee notice of the amount determined, the day to which the amount is calculated and the date for payment.

Clause 185 : Variation of lease to pay out rent

A lease will not be varied to reduce the rent payable to a nominal rent (5 cents per annum), unless the lease is included in a prescribed class of leases, all rates and land tax are paid and all provisions in the lease requiring the lessee to develop the land have been complied with. The requirements of this clause are in addition to and not in substitution for the other provisions of this Part.

Clause 186 : Certain leases not to be varied to reduce rent to a nominal rent

A lease may not be varied to reduce the rent to 5 cents per annum if it contains a provision prohibiting such a variation, has been granted for rural purposes or was granted for less than the market value of the lease other than under clause 163.

DIVISION 4 : RECOVERY OF LAND

Clause 187 : Termination of leases and licences

The Executive may terminate a lease if the lessee has breached either the provisions of this Part or the provisions of the lease. The clause also relates to termination of licences. Requirements for the giving of notice to the lessee and persons having registered interests in the lease are set out.

187(5) The Executive may not terminate a licence or lease unless it has informed the licensee or lessee that it is considering terminating the licence or lease. It will explain the grounds on which it is considering taking such action and invite the lessee or licensee to notify the Executive within 21 days why the lease or licence should not be terminated. Any reasons for not terminating the lease or licence are to be taken into account.

Clause 188 : Recovery of land on expiry, surrender or termination of lease or licence

This clause sets out the means by which the Executive can take possession of land where a lease or licence of that land has expired, been surrendered or terminated and the lessee, licensee or any other person in occupation of the land fails to deliver up that land.

Clause 189 : Certificate of Minister to be evidence

A certificate signed by the Minister, or any person authorised by the Minister, stating that a lease or licence is terminated, will be evidence of the termination of the lease.

DIVISION 5 : PUBLIC LAND

Subdivision A : Preliminary

Clause 190 : Interpretation

Definitions are provided for the purposes of this Subdivision. "Variation" in relation to a Plan of Management includes the revocation of the Plan and its substitution with a new Plan.

"Plan of Management" means a Plan of Management prepared under Subdivision D, as varied and in effect from time to time.

Subdivision B : Public Land

Clause 191 : Recommendations to the Authority

The Conservator may recommend to the Authority that the Plan be varied to enable an area of land to be identified as public land, reserved for a purpose set out in clause 192. The Conservator may also recommend that an area already reserved as public land either be varied in size or purpose, or that it cease to be designated as public land.

Subdivision C : Management of Public Land

Clause 192 : Reserved areas

The purposes for which an area of public land may be reserved under this Bill are defined.

Clause 193 : Management

An area of public land will be managed in accordance with the management objectives and the Plan of Management (if any) applying to the area.

Clause 194 : Management objectives

The management objectives for an area of public land are those specified under subclause 194(1) or as amended by instrument under subclause 194(2).

194(4) Where there is an inconsistency between two management objectives, the objective last mentioned in Schedule 1 is to be read subject to the other objective.

194(5) Where there is an inconsistency between a management objective specified in Schedule 1 and a management objective specified by the Minister by instrument, the objective specified by the Minister is to be read subject to the other objective.

194(6) The terms "conservation" and "natural environment" are defined for the purposes of Schedule 1.

Subdivision D : Plans of Management

Clause 195 : Content

The Plan of Management will include a description of the area of public land to which it applies and the manner in which the objectives are to be met.

Clause 196 : Preparation

The Conservator will prepare a draft Plan of Management as soon as practicable after an area is identified as public land in the Plan.

Clause 197 : Variations

The Conservator may prepare a draft variation of a Plan of Management in the same manner as a draft Plan of Management.

197(2) Subdivision D applies to a draft variation of a Plan of Management as if it were a draft Plan of Management.

Clause 198 : Environmental Assessments and Inquiries

The Minister may, at any time before a draft Plan of Management is approved, direct that an Assessment be made or establish a panel to conduct an Inquiry about any aspect of the draft Plan of Management.

198(2) The Conservator will, in preparing or revising a draft Plan of Management, consider any relevant Assessment or report of a relevant Inquiry.

Clause 199 : Public consultation

The public consultation procedures to be followed are set out, for those Plans of Management to which the clause applies.

199(2) The Conservator will make the draft Plan of Management available for public inspection as specified in a notice placed in the Gazette and a daily newspaper.

199(3) A notice under subclause 199(2) will invite persons to submit written comments about the draft Plan of Management to the Conservator.

Clause 200 : Revision

The Conservator may revise a draft Plan of Management in consideration of any written comments received, or to correct any formal error.

Clause 201 : Submission to Minister

The Conservator will submit a draft Plan of Management as revised under clause 200, if applicable, to the Minister for approval. Copies of any written comments received and a written report about the Conservator's consultation with the public and with any other person or authority about the draft are to be submitted with the draft.

Clause 202 : Minister's powers

The Minister's powers in dealing with a draft Plan of Management are set out. Upon receipt of the draft, the Minister will approve the Plan of Management in the form in which it was submitted or refer the draft to the Conservator together with written directions as set out in paragraph 202(b).

Clause 203 : Referral back to the Conservator

If the Minister refers a draft Plan of Management to the Conservator under clause 202(b), the Conservator will comply with that direction, if a direction is given under subparagraph 202(b)(i) or (ii) - revise the draft Plan if the Conservator thinks fit, and revise the draft to correct any formal error. The Conservator will then re-submit the draft Plan of Management for approval together with a report which addresses the compliance with the directions and any revision of the draft.

Clause 204 : Notice of revival of deferred draft Plan of Management

Where the draft Plan of Management is deferred under subparagraph 202(b)(iv), the Conservator will publish a notice in the Gazette stating that the draft is revived.

Clause 205 : Notification, tabling, disallowance, date of effect

A Plan of Management as approved by the Minister is a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

Subdivision E : Leases and LicencesClause 206 : Leases - generally

Except as provided by clause 207, the Executive will not grant a lease of public land or, during the defined period, land designated to become public land in a draft variation to the Territory Plan notified under clause 21. Subclause 206(2) defines "defined period".

Clause 207 : Grant of leases

On the written recommendation of the Conservator the Executive may, even during a defined period, grant a lease for all or part of an area of public land except where the land has been reserved under the Territory Plan as a wilderness area.

207(3) A lease granted under this clause will be laid before the Legislative Assembly within six sitting days, but failure to do so does not affect the validity of the lease.

Clause 208 : Licences

The Executive may, on the written recommendation of the Conservator, grant a licence to a person for purposes connected with the occupancy of public land. The clause sets out the formal requirements for making an application for a licence, and the form and content of the licence.

Clause 209 : Miner's rights in respect of public land

A miner's right may not be granted in respect of public land.

DIVISION 6 : ADMINISTRATIVE REVIEW

Clause 210 : Notice of decisions

210(1) In respect of the decisions of the Executive referred to in this subclause, the Executive will, within 28 days of the decision being made, give notice to such persons as the case requires.

210(2) When the Minister makes any decision referred to in this subclause the Minister will, within 28 days of the decision being made, give notice to such persons as the case requires.

Clause 211 : Review by Tribunal

An application may be made to the Tribunal for a review of any decision referred to in subclause 210(1) or (2).

DIVISION 7 : MISCELLANEOUS

Clause 212 : : Lessee may surrender lease wholly or in part

With the consent of the Executive, a person may at any time surrender a lease, or any part of the land comprised in the lease. The Executive may agree to accept the surrender either unconditionally or subject to conditions.

212(3) The surrender of a lease, or of part of the land comprised in the lease, will not entitle the lessee to a refund or remission of any rent paid or due.

Clause 213 : Reduction of rent and relief from provisions of lease

The Executive may, in respect of any period, approve a reduction of rent payable under a lease or grant relief to a lessee or occupier of land, from compliance with any provision to which his or her lease or occupation is subject. Upon the relief being granted, the liability or obligation of the lessee will be discharged to the extent of the approved reduction of rent or grant of relief.

213(2) A grant of relief approved may be unconditional or subject to conditions.

213(3) The Executive will deliver to the lessee or occupier a memorandum specifying the reduction of rent or other grant of relief it has approved.

Clause 214 : Access to leased land from public roads and carpark

The Executive will provide access to leased land. This can be directly from a public road or a public carpark, or by other means such as an access road or track. The access may be used by the lessee without charge and for all purposes at any hour of the day or night. The means of access will be located to cause as little damage or inconvenience as possible.

Clause 215 : Licences in respect of land that is not public land

A person may apply to the Executive to occupy or use an area of unleased Territory Land that is not public land. Subclause 215(2) sets out the details to be provided in the application and requires that it be accompanied by the determined fee.

215(3) The Executive may grant a licence to an applicant to occupy or use the specified land for the purposes and period specified in the application. The required form of the licence is set out in subclause 215(4).

Clause 216 : Reservation of minerals

A reservation of minerals contained in a lease of Territory Land will be read as a reservation of all minerals and mineral substances, referred to in the clause, which are found in or on the land.

Clause 217 : Rights to extract minerals

The Executive may, by lease or other agreement, grant the right to extract minerals from specified Territory Land. The provisions of such a lease or agreement will be those agreed between the parties.

Clause 218 : Access to lease documents and development agreements

Where a document is a lease, a variation of a lease or renewal of a lease, and became a document of a Commonwealth agency before 1 January 1977, section 11(2) of the Freedom of Information Act 1989 does not apply.

218(2) A lease, a variation of a lease or a renewal of a lease will not be an exempt document for the purposes of the Freedom of Information Act 1989.

Clause 219 : False statements

A person will not make a false statement in connection with an application for the grant of a lease, or the variation of a lease, that is to the knowledge of the person false or misleading in a material particular. A penalty of \$200.00 is provided.

PART VI : APPROVALS AND ORDERS

DIVISION 1 : PRELIMINARY

Clause 220 : Interpretation

A number of definitions are provided for the purposes of this Part.

Clause 221: Relationship: controlled activities and concurring authorities

The relationship between a concurring authority and a controlled activity specified as an item in Schedule 2 is explained.

DIVISION 2 : APPROVALS

Subdivision A : Preliminary

Clause 222 : Interpretation

This clause has the effect of restricting approvals under this Division to the controlled activities specified in Schedule 2.

Subdivision B : General**Clause 223 : Offence - controlled activities**

Persons and Territory authorities are prohibited from conducting a controlled activity specified in Schedule 2 without approval. Where a person is found guilty of conducting a controlled activity without approval, the offence is punishable by a fine.

Clause 224 : Application to conduct controlled activities

The requirements for making applications to conduct controlled activities are set out.

224(2) The application must be executed by the lessee of the place to which the application relates.

224(3) and (4) The Minister may make alterations to the application to correct a formal error, and an applicant who is not the lessee may be required to notify the lessee of any such alterations. The alteration must be made before notice of the application is given under clause 227.

Clause 225 : Register of applications, approvals and orders

The Minister will establish a register of all current and relevant applications, approvals and orders.

225(2) The register may be inspected by members of the public, and copies or extracts taken.

Clause 226 : Restrictions on inspection of register

An applicant may apply to the Minister to have part of his or her application excluded from being made available to the public or for inspection in the circumstances set out in this clause. Where part of an application is excluded, copies of the application made available to the public will note that an unspecified part has been excluded for the purpose of protecting confidentiality.

Clause 227 : Notice of application

The requirements for notification of an application to conduct a controlled activity are set out in this clause.

Clause 228 : Approvals

The requirements for approval of applications to conduct controlled activities are set out.

228(2) An approval will not be inconsistent with the lease to which the application applies, except where the application is to vary a lease or to execute a new lease for the purpose of subdividing or consolidating land.

- 228(3) The Minister may not approve an application without consulting each concurring authority relating to that controlled activity.
- 228(4) If the Minister fails to make a decision on an application within the prescribed period it is deemed to be refused.
- 228(5) Notwithstanding subclause 228(4) the Minister may approve an application at any time between the end of the prescribed period and the last day on which the applicant may apply to the Tribunal for a review of the decision.

Clause 229 : Matters to be considered

Matters which the Minister must consider before approving or refusing an application are set out. The clause imposes an obligation on the Minister to consult with and consider the views of any relevant Aboriginal organisation. The definition of "Aboriginal place" and "Aboriginal organisation" have the same meanings as in Part III.

Clause 230 : Duty of applicants

The Minister may require the applicant to give notice of an application instead of the Minister. The applicant may also be required to give notice to such other persons as are specified by the Minister. The applicant is responsible for the cost of a notice.

- 230(2) An application is taken to have been withdrawn if the applicant fails to give notice as required by the Minister.

Clause 231 : More information

The Minister may require an applicant to provide more information in relation to an application. The information may be required within a specified period, and the applicant may seek an extension of that period.

Clause 232 : Effect of failure to furnish further information

If the applicant does not furnish the information requested under clause 231 within the specified period, the application is taken to have been withdrawn.

Clause 233 : Duties of concurring authorities

The duties of a concurring authority upon receiving an application from the Minister are set out.

- 233(1) A concurring authority is required to advise the Minister of its decision regarding an application within the prescribed period, stating whether it objects or does not object to the application with or without conditions.

- 233(2) In relation to an application to conduct a controlled activity referred to in item 2 or 3 of Schedule 2, the Authority will consider whether or not the proposed activity would be inconsistent with the planning principles set out in the Plan or any directions of the Executive under clause 36.
- 233(3) Where a concurring authority intends not to object to an application subject to conditions, it may stipulate that the controlled activity is to be done to the satisfaction of the concurring authority or a person or body specified by the concurring authority.
- 233(4) If a concurring authority does not give notice to the Minister within the prescribed period it is to be taken that the concurring authority does not object to the approval of the application.

Clause 234 : Environmental Assessments and Inquiries

The Minister may direct that an environmental Assessment or Inquiry be conducted in relation to any aspect of an application.

Subdivision C : Objections

Clause 235 : Objections - general

The general right of persons to object to an approval, within a specified period, and the matters to be observed when a person objects are set out in this clause.

- 235(3) The Minister will give a copy of each objection, and any other submission received, to the applicant.

Clause 236 : Inspection of objections

The Minister will make a copy of each objection available for inspection by members of the public.

Clause 237 : Identity of objectors

An objector may have his or her identity excluded by the Minister if it would not be in the public interest for that identity to be published.

Subdivision D : Approvals

Clause 238 : Circumstances in which Executive approves applications, other than lease variations, subdivisions consolidations

This clause explains the circumstances in which the Executive approves applications, other than lease variations, subdivisions and consolidations, where the application is made by the Executive or a Territory Authority.

- 238(2) Where a concurring authority has given notice under subclause 233(1) that it either approves the application subject to conditions specified in the notice or objects to the application, the Executive may approve the application, with or without conditions.
- 238(3) Only the Executive may approve an application under subclause 238(2).

Clause 239 : Circumstances in which Executive approves applications for lease variations, subdivisions, consolidations

This clause explains the circumstances in which the Executive approves applications for lease variations, subdivisions and consolidations generally.

- 239(2) Where two concurring authorities do not agree, or they specify conditions which are inconsistent, the Executive may refuse or approve the application with or without conditions.
- 239(3) Only the Executive may approve or refuse an application under paragraph 239(2)(c) or (d).

Clause 240 : Application approved - notification of decision

- 240(1) Where the Minister approves an application, the Minister will give the applicant notice of the decision and the date the decision takes effect.
- 240(2) Where the Executive refuses an application or approves an application with or without conditions, the applicant will be given notice of that decision and the date the decision takes effect.
- 240(3) Written notice of an approval for a variation of a lease, or the execution of a new lease effecting a subdivision of land, will be given by the Minister to the Registrar of Titles.

Clause 241 : Notification of decision to approve or refuse to approve an application

- 241(1) Notwithstanding clause 240, where approval has been given to an application against which a person may appeal to the Tribunal under clause 274, the approval of an application must be notified as set out in this subclause. If no public notification was required, notice of the decision is to be published in a local daily newspaper, and given to each concurring authority, each adjoining lessee or occupier and each person who has objected to the approval under subclause 235(1).

- 241(2) Where regulations prescribe circumstances in which notification in the newspaper will not be complied with under clause 227, it is not necessary to publish notice of the decision in the newspaper.
- 241(3) The required contents of the notice of the decision given under subclause 241(1)(b) are set out.
- 241(4) and (5) The Minister or Executive will give notice of a refusal to the persons identified in subclause 241(4), setting out the reasons for the decision.

Clause 242 : Notification where more than one objector

Where a number of persons make one objection, the Minister or Executive may give notice to only one person

Clause 243 : Conditional approvals

The circumstances and the manner in which the Minister may approve an application subject to conditions, and the content of that approval, are described in this clause.

- 243(4) The Minister may approve an amendment to a plan, drawing or other document approved under paragraph 243(3)(k). The amendment must not be inconsistent with the terms of the lease or an approval under paragraph 243(3)(k).

Clause 244 : Minister to resolve certain inconsistencies

In relation to applications other than those to which clauses 238 and 239 apply, this clause sets out the procedures by which the Minister will resolve inconsistencies between conditions imposed by concurring authorities.

- 244(1) If the Minister is of the opinion that there is an inconsistency between conditions imposed by concurring authorities, the Minister will notify each concurring authority in writing of that opinion.
- 244(2) The concurring authorities will jointly endeavour to resolve the inconsistency.
- 244(3) and (4) The concurring authorities will notify the Minister that the matter has been resolved or not resolved, and specify any conditions which the concurring authorities have resolved to impose.
- 244(5) The Minister will direct or alter conditions as necessary to resolve the inconsistency if the concurring authorities are unable to resolve the inconsistency or fail to give notice within the prescribed period.

Clause 245 : Minor amendments

A lessee or occupier may apply for an amendment of an approval in the circumstances set out in this clause. This clause does not apply to approvals in respect of items 2 or 3 of Schedule 2. Requirements for notification of an amendment are set out in subclause 245(3).

Clause 246 : Corrections

Corrections of clerical errors, slips or omissions or defects of form may be made. The applicant must be notified in writing.

Clause 247 : Approval - when takes effect

247(1) If there is no application to the Tribunal for review within 28 days of the date of the decision, an approval takes effect 7 days after the last day on which a person may apply to the Tribunal for review of the decision, or the day on which a written notice is issued advising the applicant that no application for review has been made - whichever is earlier.

247(2) If there is an application to the Tribunal for review within 28 days of the date of the decision, the approval takes effect on the date on which the Tribunal's decision to affirm or vary the decision comes into operation.

Clause 248 : Execution of certain approvals

The Executive will execute the relevant documents at the time an approval of a variation of a lease, or a consolidation or subdivision of land, takes effect under clause 247, subject to clause 185.

Clause 249 : Expiration of approvals

Except for approvals of controlled activities referred to in Items 2 and 3 of Schedule 2, subclause 249(1) sets out the circumstances in which approvals expire. Those circumstances relate to commencement and completion of an activity within the period specified in the approval or, if no period is specified, within 2 years.

249(2) Action undertaken under an approval prior to its expiry is not invalidated by that expiry.

Clause 250 : Extension of time

The time for commencement or completion of certain controlled activities may be extended in accordance with this clause.

Clause 251 : Revocation of approval

An approval may be revoked if the Minister is satisfied that the approval was obtained by fraud or misrepresentation or, if the approval applies to a place in the Heritage Places Register or interim Heritage Places Register, the applicant is convicted of an offence under this Part.

DIVISION 3 : ORDERS

Clause 252 : Interpretation

Reference to a controlled activity in this Part does not include reference to controlled activities under Schedule 2 or to controlled activities declared under other Acts.

Clause 253 : Offences - orders

Where a person is found guilty of contravening an order, the offence is punishable by a fine. A Territory authority is constrained from contravening an order, but no offence is involved.

Clause 254 : Application for order

A person may apply for an order against a lessee or occupier, or any person on whose behalf a controlled activity is being or is to be conducted, setting out grounds on which the order is sought. Subclause 254(4) allows the Minister to initiate an order.

254(5) An order may specify the matters set out in this subclause.

254(6) If the Minister does not make an order within the prescribed time, the application for an order is deemed to be refused.

Clause 255 : Notice of making an order

Notice of an order to be given to those persons described in this clause.

Clause 256 : Effect of order in certain circumstances

256(1) A person is guilty of an offence under clause 253 if an order is contravened any time between when the order takes effect and the date the order is revoked or, if the order is appealed against, the date the decision is upheld, whichever date occurs first.

- 256(2) An order takes effect only when the period for making application to the Tribunal expires or, if within that period, application is made for a review and the decision is affirmed or varied by the Tribunal.

Clause 257 : Non-compliance

- 257(1) The Minister may direct an authorised person to carry out work which has not been done in the time specified in an order, or may apply to the Supreme Court for an injunction or order.
- 257(2) If work is done by an authorised person under subclause 257(1), the cost of that work is a debt payable by the person against whom the order was made.
- 257(3) The Minister is prevented from directing an authorised person to conduct work under paragraph 257(1)(a) if application has been made to the Tribunal for review of the order and the decision has not been upheld, or until the period for application to be made to the Tribunal has expired.

Clause 258 : Future owners and occupiers

Orders under this Division may bind subsequent lessees or occupiers. A copy of such an order will be given to the Registrar of Titles. Where the Minister revokes such an order, notice will be given to the Registrar.

Clause 259 : Powers of Supreme Court

- 259(1) Where an application is made to the Supreme Court by the Minister or by any other person, the Supreme Court may grant an injunction and may require a person to do any act or thing.
- 259(2) The Court may grant an interim injunction, pending determination of the application for an injunction.
- 259(3) The Court may rescind or vary an injunction.
- 259(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised regardless of whether the Court considers the person intends to engage or continue to engage in the conduct again, or whether the person has previously engaged in the conduct.
- 259(5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised regardless of whether the Court considers the person intends to refuse or fail again, to continue to refuse or fail to do that act or thing, and whether or not the person has previously refused or failed to do that act or thing.

DIVISION 4 : ENFORCEMENT**Subdivision A : Preliminary****Clause 260 : Things connected with offences**

The purpose of this clause is to explain when a thing is connected with a particular offence. A reference in this Part to an offence will be taken to include a reference to an offence that there are reasonable grounds for believing has been or will be committed.

260(3) Where a person is authorised to enter a place, reference to the occupier of that place includes reference to a person who the authorised person reasonably believes to be the occupier, or to be in charge of that place.

Clause 261 : Inspectors

The Minister may appoint an inspector to perform such duties as the Minister directs.

Clause 262 : Identity cards

An inspector will be issued an identity card.

Clause 263 : Return of identity cards

A penalty of \$100 is provided for failure by an inspector to return an identity card when that person ceases to be an inspector.

Subdivision B : Inspection**Clause 264 : Inspections etc.**

The powers of inspectors for the purposes of this Part are set out. An inspector may enter a place to ascertain whether a controlled activity is being conducted in accordance with an approval or an order. Entry to premises may be by consent, under a warrant or with reasonable force or assistance in serious or urgent circumstances.

Subject to clause 266, an inspector may exercise any power referred to in subclause 267 if the inspector has reasonable grounds to believe that a controlled activity is, or is intended to be, conducted in or on that place.

Clause 265 : Consent to entry

An inspector must inform the occupier of the occupier's right to refuse the inspector entry. The inspector must obtain the occupier's acknowledgement that the inspector has performed his or her duty in this regard. In any proceedings, where that acknowledgement is not produced, it will be presumed that the occupier did not consent, but that presumption is rebuttable.

Clause 266 : Display of identity cards

The inspector must show his or her identity card on request by the occupier, or the inspector must leave the place.

Clause 267 : Powers of inspection

The powers of an inspector upon entering a place, and responsibilities after entry for inspection, are set out in this clause.

267(2) A penalty of \$1,000 applies if a person does not, without reasonable excuse, comply with requirements under paragraph 290(1)(f) (g) or (h).

Clause 268 : Work carried out at direction of inspector

An authorised person, directed by the Minister to enter land under paragraph 257(1)(a), will carry out work or conduct the controlled activity in accordance with the directions of an inspector.

Clause 269 : Taking samples

An inspector's duties when taking samples under paragraph 267(c) are set out in this clause.

Clause 270 : Disposal of seized items

Items seized under paragraph 267(d) are to be disposed of in accordance with this clause.

270(1) Subject to subclause 270(2), if no prosecution has been instituted within 90 days after seizure, or if a charged person is not convicted, the Minister will take all reasonable steps to return seized items to the person reasonably believed to be entitled to them.

270(2) Seized items will be returned to the person who appears to the court to be entitled to them or those items will be forfeited to the Territory where a person is convicted or dealt with under section 556A of the Crimes Act.

Clause 271 : Search warrants

271(1) An inspector may apply to the magistrate, in accordance with this subclause, for a warrant to search for specific things believed to be connected with a particular offence.

271(2) A magistrate may issue a warrant authorising an inspector to do any of the things described in this subclause.

271(3) The magistrate may not issue a warrant under subclause 271(2) unless he or she receives whatever information he or she requires, concerning the grounds of the warrant, and unless he or she is satisfied that there are reasonable grounds for issuing the warrant.

271(4) A warrant will set out what the warrant relates to and what may be done under the warrant.

Clause 272 : Obstruction of inspectors

A penalty of \$5,000 or imprisonment for 6 months is provided for obstructing or hindering an inspector in the exercise of his or her powers.

DIVISION 5 : MISCELLANEOUS

Subdivision A : Review of decisions

Clause 273 : Review - applicants

The provisions of this clause apply to those decisions which are set out in this clause.

273(2) Where a decision to which this clause applies has been made, the applicant may apply to the Tribunal for a review of that decision.

273(3) The applicant may also apply to the Tribunal for review of a decision that an activity has not been conducted to the Minister's satisfaction (where an approval is in force).

273(4) The applicant will be notified by the Minister of any decision of a kind to which clause 273 applies.

273(5) Any decision made under subclause 273(3) will be notified to the applicant in writing.

273(6) Notice given under subclauses 273(4) or (5) will include a statement about the applicant's right to review of the decision. Failure to comply with this subclause does not invalidate a decision to which this clause applies.

Clause 274 : Review - objectors, third parties

The decisions under this Part, against which an objector or a third party may seek review by the Tribunal, are set out in subclause 274(1). The application must be made within 14 days after the date the person was notified of the decision.

Applications for review can only be made by previous objectors or by any person who can show to the Tribunal that he or she was unable to object within the prescribed time.

- 274(2) A notice given under clause 241 to a person who objected under clause 235 will include a statement about the applicant's right to review of the decision. Failure to comply with this subclause does not invalidate a decision to which this clause applies.
- 274(4) Where applications are excluded from public notification by regulation under subclause 227(8) (except where subclause 274(5) applies), subclause 274(1) does not apply and any person whose interests are affected by the decision may apply to the Tribunal for a review of the decision. This subclause should be read in conjunction with clause 240, which relates to notification of decisions.
- 274(5) A person is not entitled to apply for review under this clause if the Minister has issued a certificate indicating that an Environmental Impact Statement or an Inquiry conducted under Part IV has formed the basis of the Minister's decision, or if appeal is excluded under paragraph 7(3)(c).
- 274(6) At a hearing, the Tribunal will have regard to any decisions or recommendations of a Committee of the Legislative Assembly and any Environmental Impact Statement or Inquiry in relation to a matter which is in issue in the hearing.
- 274(7) A certificate under paragraph 274(5)(a) will be tabled in the Assembly on the first sitting day of the Assembly after the date of the certificate.

Clause 275 : Review- orders

Application may be made to the Tribunal, by persons whose interests are affected by a decision under clause 254 to make an order, refuse an order or directing a person in respect of a controlled activity.

- 275(2) Where the Minister makes a decision of the kind referred to in subclause 275(1), a notice will be given to the applicant and any other person whose interests are adversely affected by the decision.
- 275(3) A notice given under subclause 275(2) will include a statement about the right of the applicant and any other person to a review of the decision. Failure to comply with this subclause does not invalidate a decision to which this clause applies.

Clause 276 : Notification of objectors

Where an applicant applies under clause 273 for review of a decision, the Minister will, as soon as possible, notify each concurring authority and each person who objected under clause 235.

276(2) The notice under subclause 276(1) will inform the recipient that, on application to the Tribunal, the person is entitled to be made a party to the proceedings for the review.

Clause 277 : Notification of applicants

Objectors making application under clause 274 are required to notify applicants of their objection.

277(2) A notice will notify the recipient that the person is entitled to be made a party to the proceedings for the review.

277(3) The term "objector" is defined.

Clause 278 : Modification of section 28 of the Administrative Appeals Tribunal Act 1989

The operation of section 28 of the Administrative Appeals Tribunal Act is modified by this clause to enable persons who are notified under clause 276 or 277 to be made a party to Tribunal proceedings.

Clause 279 : Failure to comply with certain notification requirements

The validity of an approval is not affected by the applicant's failure to comply with subclause 227(5).

Subdivision B : General

Clause 280 : Regulations - Part VI

Regulations for the purposes of this Part may be made in relation to the matters set out in this clause.

PART VII : MISCELLANEOUS

Clause 281 : Persons authorised to exercise powers of the Executive

Subject to subclause 281(3), the Executive may by instrument authorise a person to exercise a power on its behalf in accordance with Part II or V.

281(2) Where the exercise of the power is dependent on the opinion, belief or state of mind of the Executive, a person who has been so authorised may exercise that power upon his or her opinion, beliefs or state of mind in relation to that matter.

281(3) The Executive may not authorise a person to exercise a power under subclause 162(4), 163(3), 166(1) or 177(3).

Clause 282 : Power of Administrative Appeals Tribunal and Supreme Court

Where a person appeals under this Bill, and the person's appeal is affected by his or her failure to comply with a provision of this Bill, the Court or Tribunal has a discretion to dispense with strict and literal compliance with the procedural requirements of the Bill, regulations or Plan.

Clause 283 : Corporations - penalties

The penalty for a body corporate convicted of an offence is a penalty not exceeding five times the maximum penalty which the court could impose but for this section.

Clause 284 : Conduct of directors, servants and agents

284(1) and (2) For the purposes of a prosecution, where it is necessary to establish state of mind, it is sufficient to show that the relevant director, servant or agent of a body or of a person had that intention, opinion, belief or purpose and that the conduct was within the scope of his or her actual or apparent authority.

284(3) For purposes of a prosecution, conduct by a director, servant or agent, on behalf of a body or person, will be taken as action taken by the body or person, unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

284(4) A natural person convicted of an offence against this Act is not liable to be punished by imprisonment where that person would not have been convicted of the offence if subclauses 284(1) and (3) had not been enacted.

Clause 285 : Power of Minister to determine fees

The Minister may determine fees for the purposes of this Act.

Clause 286 : Regulations

The Minister may make regulations for the purposes of this Bill. The Regulations may prescribe penalties not exceeding \$1,000.00 for offences against the regulations for individuals, or \$5,000 for bodies corporate.

SCHEDULE 1

This Schedule lists categories of public land and the management objectives for those categories.

SCHEDULE 2

This Schedule lists controlled activities and, for the purposes of this Act, the relevant concurring authority. Column 4 of the Schedule provides for penalties where a person is found guilty of conducting a controlled activity specified in this Schedule or another Act otherwise than in accordance with an approval.

SCHEDULE 3

This Schedule lists activities which may be the subject of orders. Column 3 of the Schedule provides penalties where a person is found guilty of contravening an order under subclause 253(1).