



Australian Capital Territory

# **Land (Planning and Environment) Act 1991**

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Australian Capital Territory

**LAND (PLANNING AND ENVIRONMENT)  
ACT 1991**

*Reprinted as at 31 January 1994*

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Australian Capital Territory

## LAND (PLANNING AND ENVIRONMENT) ACT 1991

An Act relating to the use of land in the Territory, and for related purposes

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Land (Planning and Environment) Act 1991*.<sup>1</sup>

#### Commencement

2.<sup>1</sup> (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before 2 April 1992, that provision, by force of this subsection, commences on that day.

#### Interpretation

4. In this Act, unless the contrary intention appears—

“Appeals Board” means the Land and Planning Appeals Board established by section 282B;

“Assessment” means an Assessment made under Division 3 of Part IV;

“Authority” means the Australian Capital Territory Planning Authority established under Division 4 of Part II;

“Conservator” means the Conservator of Wildlife appointed under section 7 of the *Nature Conservation Act 1980*;

“controlled activity” means—

- (a) an activity of a kind specified in Schedule 4 or 5; or
- (b) an activity under another Act that is declared by that Act to be a controlled activity for the purposes of Schedule 4 or 5;

“determined fee” means the fee determined pursuant to section 287 for the purposes of the provision in which the expression occurs;

“formal error” means—

- (a) a clerical error;
- (b) an error arising from an accidental slip or omission; or
- (c) a defect of form;

“Heritage Council” means the Heritage Council established under Division 8 of Part III;

“Heritage Places Register” means the register of heritage places incorporated in the Plan;

“heritage significance” means archaeological, historic, aesthetic, architectural, scientific, natural or social significance, or other special significance in relation to the environment, for the present community, and for future generations;

“Inquiry” means an inquiry conducted under Division 4 of Part IV;

“interim Heritage Places Register” has the meaning assigned to that expression by section 53;

“newspaper” means a newspaper published and circulating in the Territory;

“Plan” means the Territory Plan as in effect from time to time under this Act;

“Registrar” means the Registrar of the Appeals Board;

“Territory authority” means—



- (a) a body (whether corporate or not) established by or under an Act, or by the Executive; or
- (b) the holder of an office established by or under an Act, or by the Executive.

## **PART II—PLANNING**

### ***Division 1—Preliminary***

#### **Interpretation**

**5.** In this Part, unless the contrary intention appears—

“background papers”, in relation to a draft Plan variation or a Plan variation means—

- (a) an explanatory statement;
- (b) a copy of—
  - (i) any relevant direction of the Executive;
  - (ii) any relevant direction of the Minister under paragraph 93 (1) (b);
  - (iii) any submission of the Conservator referred to in section 16, including any preliminary draft Plan of Management (prepared under Subdivision D of Division 5 of Part V) accompanying such a submission;
  - (iv) any interim Heritage Places Register referred to in section 17;
  - (v) any relevant environmental report;
  - (vi) the report of any relevant Inquiry; and
  - (vii) the report of any other inquiry relating to the variation;
- (c) if the draft Plan is inconsistent with—
  - (i) a direction referred to in subparagraph (b) (i) or (ii);
  - (ii) a submission referred to in subparagraph (b) (iii);
  - (iii) any interim Heritage Places Register referred to in section 17; or

(iv) a recommendation included in a report referred to in subparagraph (b) (v), (vi) and (vii);

a statement by the Authority of the reasons for that inconsistency;

(d) in the case of a draft Plan variation of the kind referred to in subsection 17 (3)—a copy of any written response of the Heritage Council submitted in accordance with subsection 17 (4), together with a statement by the Authority commenting on that response; and

(e) any other documents—

(i) considered by the Authority to be necessary or useful in explaining the draft Plan variation; and

(ii) designated by the Authority in writing as background papers;

“Chief Planner” means the Chief Planner for the Australian Capital Territory appointed under section 43;

“Commonwealth Planning Act” means the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“development”, in relation to land, means—

(a) the erection, alteration or demolition of a building on that land;

(b) the carrying on of work on that land;

(c) the use or change of use of that land;

(d) the use or change of use of a building or works on that land;

(e) the subdivision or consolidation of that land; or

(f) the display of signs or advertising material on that land;

“draft Plan variation” means a draft Plan variation notified under section 19, as revised under paragraph 22 (1) (a) and section 27;

“environmental report” means—

(a) a preliminary assessment under Division 2 of Part IV;

(b) a report under section 128; or

(c) an Assessment;

“land” includes water;

“National Authority” means the National Capital Planning Authority established by section 5 of the Commonwealth Planning Act;

“National Capital Plan” means the plan approved under section 19 of the Commonwealth Planning Act, being that plan as amended and in effect from time to time;

“variation”, in relation to the Plan, includes the revocation of the Plan and its substitution with a new Plan.

### **Stages and parts of the Plan**

**6.** In this Part, unless the contrary intention appears, a reference to a draft Plan variation is to be read as including a reference to—

- (a) a draft stage or part of the variation; or
- (b) a provision—
  - (i) of the draft variation; or
  - (ii) of a draft stage or part of the variation.

### ***Division 2—Territory Plan—object and effect***

#### **Object**

**7. (1)** The object of the Plan shall be to ensure, in a manner not inconsistent with the National Capital Plan, that the planning and development of the Territory provides the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation.

**(2)** The Plan shall—

- (a) set out the planning principles and policies for giving effect to its object; and
- (b) reserve an area of public land for each of the purposes specified in section 193.

**(3)** For the purpose of giving effect to the object of the Plan and the principles and policies referred to in subsection (2), the Plan may—

- (a) set out specific objectives and policies;
- (b) specify purposes for which land may be used;

- (c) for the purposes of Part VI, specify—
  - (i) controlled activities and authorities that are concurring authorities in relation to each controlled activity so specified; and
  - (ii) circumstances in which persons are not entitled to apply for the review of decisions referred to in that Part;
- (d) incorporate a register of heritage places known as the Heritage Places Register;
- (e) identify land for the purposes of Subdivision D of Division 3 of this Part, specifying in addition the principles and policies for its development;
- (f) for the purposes of Division 5 of Part V—identify an area of land as public land and reserve it for a purpose specified in that Part;
- (g) provide for such other matters as are relevant to—
  - (i) the exercise; or
  - (ii) the administrative review of the exercise;of the powers of the Territory, the Executive or a Territory authority under a Territory law; and
- (h) provide for such matters as are otherwise necessary or convenient.

### **Effect of Plan**

**8. (1)** Subject to subsection (2), the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, that is inconsistent with the Plan.

**(2)** Subsection (1) does not apply in relation to the approval pursuant to the *Buildings (Design and Siting) Act 1964* of a proposal for the development of land involving an aspect of external design and siting where—

- (a) the application for approval of the proposal was made pursuant to that Act before 18 October 1993;
- (b) the Authority did not refuse to approve the application before that day; and
- (c) the proposal is consistent with the Plan as in effect on 17 October 1993.

**Effect of draft Plan variations**

**9. (1)** Subject to section 11, during—

- (a) the defined period; or
- (b) the period specified in the notice under section 19 of a draft Plan variation;

whichever is shorter, the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act that—

- (c) would be inconsistent with the Plan if it were varied in accordance with the draft variation; or
- (d) is inconsistent with the Plan.

**(2)** Where a draft Plan variation is deferred under paragraph 22 (1) (b) or 27 (a), this section does not apply in relation to that draft variation during the period of its deferral.

**(3)** In this section—

“defined period” means the period commencing on the date the draft Plan variation is notified in the *Gazette* under section 19 and terminating at the expiration of the day before—

- (a) the date the draft variation comes into effect;
- (b) the date the corresponding Plan variation is rejected by the Legislative Assembly;
- (c) the date the Executive revokes its approval of the corresponding Plan variation; or
- (d) the date the draft variation, or the corresponding Plan variation, is withdrawn under paragraph 22 (1) (c), 27 (a) or 29 (9) (b);

as the case requires;

“draft Plan variation”—

- (a) means a draft Plan variation as revised under paragraph 22 (1) (a) and section 27; and
- (b) includes a provision of a draft Plan variation.

**Effect of interim Heritage Places Register**

**10. (1)** Where an interim Heritage Places Register that has been submitted to the Authority pursuant to section 63 is not submitted to the Executive in a draft Plan variation before the expiration of the applicable period, it ceases to have effect on the expiration of that period.

**(2)** For the purposes of this section, the applicable period in relation to an interim Heritage Places Register is the period of 4 months commencing on the day on which the Register is submitted to the Authority pursuant to section 63 or such longer period commencing on that day as the Minister, by writing, allows.

**(3)** Where an interim Heritage Places Register that has been submitted to the Authority pursuant to section 63 is not submitted to the Executive in a draft Plan variation before the expiration of the applicable period, the Authority shall, within 28 days after the expiration of that period, submit a statement in writing to the Executive setting out the reasons why the Authority did not include the Register in a draft Plan variation.

**Draft Heritage Places Register and variations—lack of effect**

**11. (1)** A draft Heritage Places Register, or a draft variation to the Heritage Places Register, notified under section 19 as a draft Plan variation, or as part of a draft Plan variation, has no effect.

**(2)** Subsection (1) does not apply in relation to an interim Heritage Places Register.

**Plan not to have retrospective effect**

**12.** Where, immediately before the Plan comes into effect under this Act, it would be lawful to use any land in a particular way in the exercise of a right derived from an estate in that land, the Plan does not prevent the use of that land in that way during the term of the estate.

***Division 3—Territory Plan—continuation and variation******Subdivision A—Territory Plan*****Continuation of Plan**

**13.** The plan established under Part III of the *Interim Planning Act 1990*, being that plan as in effect under that Act immediately before the commencement of this section, continues in effect under this Act as the Territory Plan and may be varied in accordance with this Part.

***Subdivision B—Preparation of variations of the Plan***

**Application**

14. This Subdivision does not apply in relation to a variation to the Plan under Subdivision D.

**Preparation of variations**

15. (1) The Authority shall prepare the variations to the Plan.

(2) The Authority may prepare Plan variations in separate stages or parts.

(3) All variations to the Plan prepared by the Authority shall have regard to any relevant provisions of the document known as the Metropolitan Policy Plan (1984) until that policy plan is replaced by a further comprehensive strategy for the long term development of land in the Territory.

**Conservator's recommendations**

16. In preparing a draft Plan variation, the Authority shall consider any submission made by the Conservator, including any preliminary draft Plan of Management under Subdivision D of Division 5 of Part V accompanying such a submission.

**Heritage**

17. (1) Where the Heritage Council submits an interim Heritage Places Register to the Authority pursuant to section 63, the Authority shall consider the interim Register and, if it agrees with all the proposals contained in the Register or any of them—

- (a) where it agrees with all the proposals—forthwith include the interim Register in a draft Plan variation; or
- (b) where it does not agree with all the proposals—forthwith prepare a draft Heritage Places Register, or a draft variation to the Heritage Places Register, that contains the proposals with which it agrees and include the draft Register, or the draft variation of the Register, prepared by the Authority in a draft Plan variation.

(2) A draft Heritage Places Register, or a draft variation to the Heritage Places Register, included in a draft Plan variation is not to include any provision which would have the effect of including in the Heritage Places Register any entry in addition to the entries—

- (a) proposed, in any relevant interim Heritage Places Register, for inclusion in the Heritage Places Register; or

- (b) in the case of a draft variation to the Heritage Places Register—  
included in that Register.
- (3) If the Authority—
  - (a) prepares a draft variation to the Heritage Places Register in the absence of a relevant interim Heritage Places Register; or
  - (b) prepares a draft Heritage Places Register, or a draft variation to that Register, which is different from any relevant interim Heritage Places Register;

the Authority shall give written notice to the Heritage Council no later than 28 days before the date (being a date specified in the notice) on which the Authority intends to notify the relevant draft Plan variation in the *Gazette* under section 19.

(4) In preparing a draft variation of the kind referred to in subsection (3), the Authority shall consider any written response submitted by the Heritage Council where that response is submitted not later than 7 days before the date specified in the notice under subsection (3) as the date the Authority intends to notify the relevant draft Plan variation in the *Gazette* under section 19.

(5) In this section—

“relevant interim Heritage Places Register” means an interim Heritage Places Register which has effect under Part III, as revised under that Part.

### **Environmental reports and Inquiries**

**18. (1)** In preparing a draft Plan variation, the Authority shall consider—

- (a) any relevant environmental report;
- (b) the report of any relevant Inquiry; and
- (c) any relevant report required to be prepared by the Plan.

(2) At the Authority’s written request, or of his or her own motion, the Minister may—

- (a) direct that an Assessment be made; or
- (b) establish a panel to conduct an Inquiry;

about any aspect of a draft Plan variation or a proposed draft Plan variation.



### **Public consultation**

**19. (1)** Before submitting a draft Plan variation to the Executive, the Authority shall cause to be published in the *Gazette*, and in a daily newspaper, a notice—

- (a) stating that copies of the draft Plan variation and the background papers are available for public inspection and purchase during a specified period of not less than 21 days at specified places;
- (b) inviting interested persons to submit written comments about the draft variation to the Authority at a specified address and within a period of not less than 21 days;
- (c) stating the effect of sections 9 and 11; and
- (d) specifying, for the purpose of paragraph 9 (1) (b), the maximum period (being a period not exceeding 1 year) during which the draft variation is to have an interim effect.

**(2)** The Authority shall make copies of the draft Plan variation and the background papers available for public inspection and purchase during office hours during the period, and at the places, specified in the notice.

**(3)** The Authority may, on request by a person who has provided written comments in relation to a draft Plan variation, exclude from the copies of the draft variation, or the background papers relating to the draft variation, that are made available for public inspection or purchase pursuant to subsection (2) information which would identify the person if, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for the information to be published.

**(4)** Where, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for part of a draft Plan variation, or a part of a background paper relating to a draft Plan variation, to be published, the Authority shall cause that part to be excluded from each copy of the draft variation or the background paper made available for public inspection or purchase pursuant to subsection (2).

**(5)** Where part of a draft Plan variation or a background paper is excluded from the copies of the draft variation or paper made available for public inspection or purchase pursuant to subsection (2), each copy so made available shall include a statement to the effect that an unspecified part of the draft variation or paper has been excluded in the public interest.

**(6)** Where, on application by the Authority, the Executive is satisfied that a draft Plan variation—

- (a) has the sole purpose of correcting a formal error in the Plan; or
- (b) would, if approved, not affect the rights of any person in a manner prejudicial to that person;

it may, by instrument, relieve the Authority of the necessity for complying with subsections (1) and (2) in relation to the draft variation.

(7) Where, pursuant to an instrument under subsection (6), the Authority does not comply with subsections (1) and (2) in relation to a draft Plan variation it shall obtain such information about the public attitudes to the draft variation as is reasonable in the circumstances.

(8) This section does not apply in relation to a draft Plan variation that has been revised by the Authority pursuant to a direction under paragraph 26 (1) (b).

### **Consultation with the National Capital Planning Authority**

20. Before submitting a draft Plan variation to the Executive, the Authority shall consult with the National Authority about the draft.

### **Public inspection of comments**

21. (1) Before submitting a draft Plan variation to the Executive, the Authority shall cause to be published in a daily newspaper a notice stating that copies of any written comments—

- (a) submitted pursuant to the invitation in the relevant notice under subsection 19 (1) or otherwise; and
- (b) received from the National Authority;

are available for public inspection within a specified period of at least 21 days from the date of the notice, at specified places.

(2) The Authority shall make copies of any comments referred to in subsection (1) available for public inspection during office hours during the period, and at the places, specified in the notice.

(3) The Authority may, on request by a person who has provided written comments in relation to a draft Plan variation, exclude from the copies of the written comments that are made available for public inspection pursuant to subsection (2) information which would identify the person if, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for the information to be published.

**Revision, deferral or withdrawal of draft Plan variation**

**22. (1)** After the expiration of the period specified in the notice under subsection 19 (1) the Authority may—

- (a) revise the draft Plan variation;
- (b) by notice published in the *Gazette* defer until a specified date, or until the occurrence of a specified event, the submission of the draft Plan variation to the Executive; or
- (c) by notice published in the *Gazette* withdraw the draft Plan variation.

**(2)** A notice under paragraph (1) (b) or (c) shall include a statement of the effect of section 9 in relation to the deferral or withdrawal of the draft Plan variation.

**(3)** In revising, deferring or withdrawing a draft Plan variation under subsection (1), the Authority shall consider written comments about the draft variation received from any person or the National Authority.

**(4)** In addition to its power under subsection (1), the Authority may, at any time before the submission or re-submission of a draft Plan variation to the Executive, revise the draft variation to correct any formal error.

**(5)** Where a draft Plan variation is deferred by notice under paragraph (1) (b), on the date specified in the notice, or as soon as practicable after the occurrence of the event specified in the notice, as the case requires, the Authority shall cause to be published in the *Gazette* a notice stating—

- (a) that the draft variation is revived; and
- (b) the effect of section 9 in relation to the revival of the draft variation.

**(6)** Where a draft Plan variation has been revised the Authority shall cause to be published in the *Gazette* and on a Saturday in a daily newspaper circulating in the Territory that the draft Plan variation has been revised and that copies are available for public inspection.

***Subdivision C—Executive approval and consideration by the Legislative Assembly***

**Application**

**23.** This Subdivision does not apply in relation to a Plan variation under Subdivision D.

**Submission of draft Plan variation to Executive**

**24. (1)** After the expiration of the period specified in the notice under subsection 19 (1), the Authority shall submit a draft Plan variation to the Executive for approval, together with—

- (a) the background papers;
- (b) a written report setting out the issues raised in any written comments concerning the draft variation submitted pursuant to the invitation in the relevant notice under subsection 19 (1) or otherwise;
- (c) a written report about its consultation with the public and the National Authority;
- (d) a written report about any consultation between the Authority and the Heritage Council relating to the draft variation, being a report that specifies any difference between the views of the Authority and the Heritage Council in relation to any site of heritage significance; and
- (e) a copy of any written comments submitted to the Authority by the National Authority or the Heritage Council in relation to the draft variation.

**(2)** The Authority shall cause to be published in the *Gazette* by advertising and in a daily newspaper a notice stating that the documents referred to in subsection (1) are available for public inspection.

**Consideration by a Legislative Assembly Committee**

**25.** The Executive shall, within 28 days of receiving a draft Plan variation under section 24, refer—

- (a) the draft Plan variation; and
- (b) the documents referred to in subsection 24 (1) that relate to the draft Plan variation;

to an appropriate committee of the Legislative Assembly together with a request that the committee report on the draft Plan to the Legislative Assembly.

**Executive powers**

**26. (1)** On receipt of a draft Plan variation submitted or re-submitted for approval, the Executive shall—

- (a) approve the draft variation in the form in which it is submitted or re-submitted; or

- (b) return the draft variation to the Authority together with any or all of the following written directions:
  - (i) to conduct further specified consultation;
  - (ii) to consider any relevant environmental report, the report of any relevant Inquiry, or any other relevant report;
  - (iii) to consider any revision suggested by the Executive;
  - (iv) to revise the draft variation in a specified manner;
  - (v) to defer, by notice published in the *Gazette*, the re-submission of the draft variation to the Executive until a specified date or the occurrence of a specified event;
  - (vi) to withdraw the draft variation by notice published in the *Gazette*.

(2) Before exercising its powers under paragraph (1) (a) the Executive shall have regard to any recommendations of a committee of the Legislative Assembly in relation to the draft Plan variation, background papers and reports submitted to the Executive and the committee under sections 24 and 25.

(3) A notice under subparagraph (1) (b) (v) or (vi) shall state the effect of section 9 in relation to the deferral or withdrawal of the draft Plan variation.

(4) The Executive may revoke its approval of a Plan variation at any time before the variation is laid before the Legislative Assembly.

(5) Where the Executive revokes its approval of a Plan variation it shall cause to be published in the *Gazette* a notice stating—

- (a) that the approval of the variation has been revoked; and
- (b) the effect of section 9 in relation to the revocation of the approval.

#### **Return of draft Plan variation to the Authority**

27. If the Executive returns a draft Plan variation to the Authority under paragraph 26 (1) (b), the Authority shall—

- (a) comply with any Executive direction;
- (b) if the Executive gives a direction under subparagraph 26 (1) (b) (i), (ii) or (iii)—
  - (i) if the Authority thinks fit, revise the draft variation; and

- (ii) re-submit the draft variation to the Executive for approval together with a written report about the Authority's compliance with the Executive directions and any further revision of the draft variation under subsection 22 (4); and
- (c) if the Executive gives a direction under subparagraph 26 (1) (b) (iv)—re-submit the draft variation (as revised) together with a written report about any further revision of the draft variation under subsection 22 (4).

### **Notice of revival of deferred draft Plan variation**

**28.** Where the Authority, in compliance with an Executive direction under subparagraph 26 (1) (b) (v), defers a draft Plan variation, on the date specified in the notice of deferral, or within a reasonable time after the occurrence of the event specified in that notice, as the case requires, the Authority shall—

- (a) cause to be published in the *Gazette*, and in a daily newspaper, a notice stating—
  - (i) that the draft variation is revived;
  - (ii) the effect of section 9 in relation to the revival of the draft variation; and
  - (iii) the effect of any revision under subsection 22 (4);
- (b) re-submit the draft variation to the Executive; and
- (c) advise the Legislative Assembly.

### **Consideration of Plan variation by Legislative Assembly**

**29. (1)** A Plan variation shall be laid before the Legislative Assembly within 5 sitting days of its approval by the Executive, together with—

- (a) the background papers;
- (b) a copy of the summaries and reports referred to in paragraphs 24 (b), (c) and (d);
- (c) a copy of any direction given under paragraph 26 (1) (b);
- (d) a copy of any report referred to in subparagraph 26 (1) (b) (ii); and
- (e) a copy of any report referred to in paragraph 27 (c);

in relation to the variation.

(2) If a Plan variation is not laid before the Legislative Assembly in accordance with subsection (1) it does not come into effect.

(3) The Legislative Assembly may, pursuant to a motion of which notice has been given within 5 sitting days after a Plan variation has been laid before it, by resolution reject the variation or any provision of it.

(4) If, at the expiration of 5 sitting days after notice of a motion to reject a Plan variation or a provision of a Plan variation has been given in the Legislative Assembly (being notice given within 5 sitting days after the variation was laid before the Legislative Assembly)—

- (a) the notice has not been called on; or
- (b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the Plan variation or provision specified in the motion shall be deemed to have been rejected by the Legislative Assembly.

(5) If, before the expiration of 5 sitting days after a notice of motion to disallow a Plan variation or a provision of a Plan variation has been given in the Legislative Assembly (being notice given within 5 sitting days after the variation was laid before the Legislative Assembly)—

- (a) the Legislative Assembly is dissolved or expires; and
- (b) at the time of dissolution or expiry—
  - (i) the notice has not been withdrawn and the motion has not been called on; or
  - (ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the Plan variation shall, for the purposes of subsections (3) and (4), be deemed to have been laid before the Legislative Assembly on the first sitting day of the Legislative Assembly after the next general election of members of the Assembly.

(6) If, at the expiration of 5 sitting days after a Plan variation is laid before the Legislative Assembly, the Assembly has not passed a resolution rejecting the variation or any provision of it and is not, pursuant to subsection (4), to be deemed to have rejected the variation or any provision of it, the Minister shall cause to be published in the *Gazette* a notice—

- (a) specifying the date of commencement of the variation, or the dates of commencement of the various provisions of the variation, being a date or dates not before the date of publication of the notice; and
- (b) specifying a place or places where copies of the variation may be inspected or purchased.

(7) If a Plan variation or a provision of a Plan variation is—

- (a) rejected pursuant to subsection (3); or
- (b) to be deemed to be rejected pursuant to subsection (4);

the variation or provision does not come into effect.

(8) If the whole of a Plan variation is rejected, the Minister shall cause a notice to be published in the *Gazette* stating that the variation has been rejected.

(9) If part only of a Plan variation is rejected, or is pursuant to subsection (4) to be deemed to be rejected, the Minister shall, in relation to each remaining provision of the variation—

- (a) cause to be published in the *Gazette* a notice specifying—
  - (i) the date of commencement of the provision being a date not before the date of publication of the notice; and
  - (ii) a place or places where copies of the provision may be inspected or purchased; or
- (b) by notice published in the *Gazette* withdraw the provision.

(10) The Minister shall make copies of a Plan variation, or any relevant provision of a Plan variation, available for inspection or purchase during office hours at the places and during the period specified in the relevant notice under subsection (6) or paragraph (9) (a).

### **Commencement**

**30.** A Plan variation, or a provision of a Plan variation, comes into effect on the date specified in the relevant notice under subsection 29 (6) or paragraph 29 (9) (a).

### ***Subdivision D—Plan variations—defined land***

### **Interpretation**

**31.** In this Subdivision—



“defined land” means land identified in the Plan pursuant to paragraph 7 (3) (e).

**Plan variations in relation to defined land**

**32. (1)** Upon approval of the subdivision of a parcel of defined land, the Authority shall, by notice published in the *Gazette*, vary the Plan to specify the purposes for which that land may be used.

**(2)** A notice under subsection (1) in relation to a parcel, or part of a parcel, of land shall include a map of that parcel or part showing the purposes for which identified parts of that land may be used.

**(3)** A variation of the Plan under subsection (1) is to be consistent with—

- (a) the relevant subdivision and any conditions subject to which that subdivision is approved; and
- (b) the principles and policies specified in the Plan for the development of the relevant defined land.

**(4)** A variation of the Plan under subsection (1) takes effect from the date of its publication in the *Gazette*, or from such later date as is specified in the notice under that subsection.

**(5)** The Authority shall, within 7 days after the date on which a notice under subsection (1) is published in the *Gazette*, cause to be published in a daily newspaper a notice that—

- (a) specifies the variation made to the Plan by the notice under subsection (1);
- (b) includes a copy of the map that was included in the notice under subsection (1); and
- (c) specifies the date on which the variation to the Plan took effect or is to take effect.

***Division 4—Australian Capital Territory Planning Authority***

***Subdivision A—Establishment, constitution, functions and powers***

**Establishment**

**33.** The Australian Capital Territory Planning Authority is established by this section.

**Constitution**

**34.** The Authority is constituted by the Chief Planner.

**Agent of the Crown**

**35.** The Authority is an agent of the Crown.

**Functions**

**36. (1)** The functions of the Authority are—

- (a) to administer the Plan;
- (b) to keep the Plan under constant review and to propose variations to it where necessary;
- (c) to perform such other functions as are required by this Act or any other law of the Territory, or by any law of the Commonwealth; and
- (d) with the written approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas.

**(2)** The Authority shall perform its functions in accordance with any directions given under subsection 37 (1).

**(3)** The Authority shall comply with any directions given under subsection 37 (2).

**Executive policy directions**

**37. (1)** The Executive may give the Authority general directions in writing about the policies and objectives it should pursue in the performance of its functions.

**(2)** The Executive may give the Authority general directions in writing to review the Plan, or any specified part of the Plan.

**(3)** The Minister shall cause particulars of any directions to be published in the *Gazette* within 14 days.

**(4)** Directions not published in accordance with subsection (3) cease to have effect from the expiration of the 14th day after they are given.

**(5)** The Authority shall publish particulars of any directions given in a financial year in its annual report for that year.

**(6)** This section does not apply in relation to a direction given under section 26.

### **Powers**

**38. (1)** The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions.

**(2)** For the purposes of the performance of its functions, the Authority may, on behalf of the Territory, enter into contracts.

**(3)** The Authority shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Authority of an amount exceeding \$100,000.

### **Annual report**

**39.** The Authority shall, after each 30 June, prepare and furnish to the Minister a report of the operations of the Authority during the year ending on that date.

### **Delegation**

**40.** The Authority may, by instrument, delegate all or any of the Authority's powers to a public servant or to the holder of an office established by or under an Act.

### **Staff**

**41.** The Authority is to be assisted in the performance of its functions by public servants.

### **Effect of irregularity of appointment of Chief Planner**

**42.** Anything done by or in relation to the Authority is not invalid because—

- (a) there is a defect or irregularity in or in connection with the appointment of the Chief Planner; or
- (b) that appointment had ceased to have effect.

### *Subdivision B—Chief Planner*

#### **Chief Planner**

**43. (1)** The Minister shall, by instrument, appoint a person to be Chief Planner for the Australian Capital Territory.

**(2)** The Chief Planner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment.

(3) The Chief Planner holds office on such terms and conditions (in respect of matters not provided for by this Part) as are determined by the Minister in writing.

(4) A retiring Chief Planner is eligible for re-appointment.

(5) In the performance of his or her functions and the exercise of his or her powers the Chief Planner is directly responsible to the Minister.

### **Acting Chief Planner**

**44. (1)** The Minister may, by instrument, appoint a suitably qualified and experienced person to act as Chief Planner—

- (a) during a vacancy in the office of Chief Planner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chief Planner is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of that office;

but a person appointed to act during a vacancy shall not continue to do so for more than 12 months.

(2) Anything done by or in relation to a person purporting to act as Chief Planner is not invalid because—

- (a) the occasion for the appointment had not arisen;
- (b) there is a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

(3) A person who is acting as Chief Planner, if a public servant, shall continue to be paid the remuneration and allowances payable to him or her as a public servant, but shall also be paid—

- (a) so much of any remuneration payable to the Chief Planner as exceeds the remuneration that so continues to be paid;
- (b) so much of any allowance payable to the Chief Planner as exceeds the corresponding allowance that so continues to be paid; and
- (c) if an allowance is payable to the Chief Planner in respect of which there is no corresponding allowance payable to the acting Chief Planner as a public servant—that allowance.

### **Remuneration and allowances**

**45. (1)** The Chief Planner shall be paid such remuneration and allowances as are prescribed.

**(2)** Subsection (1) does not apply in relation to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Chief Planner; or
- (b) an allowance of a particular kind if there is such a subsisting determination relating to an allowance of that kind to be paid to the Chief Planner.

**(3)** In subsection (2)—

“determination” means a determination of the Remuneration Tribunal of the Commonwealth.

**(4)** This section does not apply where the Chief Planner is the Head of Administration or an Associate Head of Administration.

### **Leave of absence**

**46.** The Minister may, by writing, grant leave of absence to the Chief Planner on specified terms and conditions as to remuneration or otherwise.

### **Disclosure of interests**

**47. (1)** A person appointed to be the Chief Planner or to act as Chief Planner shall, upon his or her appointment and on each subsequent 30 June, give written notice to the Minister of all his or her direct or indirect pecuniary interests.

**(2)** If the Chief Planner or a person acting as Chief Planner has or acquires a direct or indirect pecuniary interest in a matter which, to his or her knowledge, is being considered or about to be considered by the Authority, the Chief Planner shall give written notice to the Minister of that interest.

### **Other employment, remuneration, business etc.**

**48. (1)** Except with the written permission of the Minister, the Chief Planner shall not—

- (a) accept or continue to hold an office in or under the Government of the Commonwealth, another Territory or a State, or in or under any public or municipal corporation;

- (b) accept or continue to hold or discharge the duties of, or be employed in a paid office in connection with any business whether carried on by any corporation, company, firm or individual;
- (c) engage in or undertake any business, whether as principal or agent;
- (d) engage or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged;
- (e) act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of his or her office as Chief Planner or as a public servant; or
- (f) accept or engage in any remunerative employment other than in connection with the duties of his or her office as Chief Planner or as a public servant.

(2) Nothing in this section is to be taken to prohibit the Chief Planner from becoming a member or shareholder of any incorporated company, or of any company or society of persons.

### **Resignation**

49. The Chief Planner may resign office by writing signed by him or her and delivered to the Minister.

### **Termination of appointment**

50. (1) The Minister may terminate the appointment of the Chief Planner for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of the Chief Planner if he or she—

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) without reasonable excuse, contravenes section 47 or 48; or
- (c) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 1 year.

***Division 5—Miscellaneous***

**Challenge to validity of provisions of Plan**

**51.** The validity of a provision of the Plan shall not be questioned in any legal proceedings except those commenced within 3 months after the date of the commencement of the provision or of a variation of the provision.

**PART III—HERITAGE**

***Division 1—Preliminary***

**Interpretation**

**52. (1)** In this Part, unless the contrary intention appears—

“Aboriginal object” means—

- (a) a natural or manufactured object; or
- (b) human remains not buried in accordance with a law of the Territory, a State or another Territory;

which is, or are, of significance in Aboriginal tradition;

“Aboriginal place” means a place which is of significance in Aboriginal tradition;

“Aboriginal tradition” means the traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation and include traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonisation;

“conservation” includes preservation, protection, maintenance, restoration and enhancement;

“heritage object” means a natural or manufactured object, including an Aboriginal object, of heritage significance in relation to the Territory;

“heritage place” means a place in the Territory of heritage significance;

“interim variation”, in relation to the Heritage Places Register, means a proposed variation to that Register notified under section 60;

“relevant Aboriginal organisation”, in relation to a proposed action by the Territory, the Executive, the Minister or a Territory authority, means an organisation or association (whether incorporated or unincorporated)—

- (a) comprised substantially of Aboriginal persons;
- (b) having amongst its principal objects the conservation of Aboriginal tradition in the Territory; and
- (c) which the person or body proposing the action believes on reasonable grounds to have an object or interest directly relevant to, or directly affected by, that action;

“restricted information”, in relation to an Aboriginal place, means information which is the subject of a declaration under subsection 82 (1);

“variation” includes revocation and substitution.

(2) Where this Part requires the Executive, the Minister or the Heritage Council to consult with, or to notify, any person or body (whether corporated or unincorporated), that requirement is to be taken to be satisfied if the Executive, the Minister or the Heritage Council (as the case requires) takes all reasonable steps to consult with, or to notify, that person or body.

### **Interim Registers—interpretation**

53. In this Part, unless the contrary intention appears, a reference to an interim Heritage Places Register is to be taken to be a reference to—

- (a) where there is no Heritage Places Register—a proposed Heritage Places Register; or
- (b) where there is a Heritage Places Register—an interim variation to that Register;

being a proposed Register, or an interim variation to a Register, notified in the *Gazette* under section 60, as revised under section 62.

## ***Division 2—Heritage Places Register***

### **Content of Heritage Places Register**

54. (1) The Heritage Places Register shall—

- (a) identify heritage places, specifying any that are Aboriginal places;
- (b) identify—
  - (i) each structure or group of structures;
  - (ii) each object or group of objects, specifying any that are Aboriginal objects;



- (iii) each landform or group of landforms;
- (iv) each plant or group of plants;
- (v) each animal habitat; or
- (vi) each other feature (whether manufactured or natural);

which is located on each identified heritage place and which is intrinsic to the heritage significance of the place;

- (c) include a statement of the heritage significance of each identified heritage place;
- (d) specify requirements for the conservation of the heritage significance of each identified heritage place, including any requirements for the conservation of features identified as intrinsic to that heritage significance; and
- (e) specify any restricted information in the Register in relation to an Aboriginal place referred to in the Register.

(2) A word or phrase in the Heritage Places Register has the same meaning as in this Part, unless the contrary intention appears in the Register.

### ***Division 3—Interim Heritage Places Registers***

#### ***Subdivision A—Effect***

##### **Effect of interim Registers**

**55. (1)** Where there is no Heritage Places Register, during the defined period an interim Heritage Places Register has effect as if it were the Heritage Places Register.

(2) Where an interim Heritage Places Register is in the form of an interim variation to the Heritage Places Register, during the defined period the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, which—

- (a) would be inconsistent with the Heritage Places Register if it were varied in accordance with the interim variation; or
- (b) is inconsistent with the Heritage Places Register.

(3) In this section, in relation to an interim Heritage Places Register—

“defined period” means the period commencing on the date the interim Register is notified in the *Gazette* under section 60 and terminating at the expiration of—

- (a) the day before the date a Heritage Places Register prepared in consideration of the interim Register comes into effect under section 30; or
- (b) the period specified in that notice in the *Gazette*;

whichever is shorter.

***Subdivision B—Preparation, notification, submission of  
Registers***

**Criteria for preparation**

**56.** In preparing an interim Heritage Places Register, the Heritage Council shall—

- (a) assess the heritage significance of a place in accordance with the criteria specified in Schedule 2; and
- (b) consider the need to take measures which are prudent and feasible to conserve the heritage significance of each heritage place.

**Ministerial directions and declarations under Division 5**

**57. (1)** Where the Minister issues a direction under paragraph 69 (1) (a) or 73 (1) (a) to the Heritage Council to notify an interim Heritage Places Register in relation to a place, the Heritage Council shall comply with that direction.

**(2)** While a declaration of the Minister under paragraph 69 (1) (b) or 73 (1) (b) is in force, the Heritage Council shall not notify an interim Heritage Places Register which would have the effect of listing that place on the Heritage Places Register.

**Public consultation**

**58. (1)** In preparing an interim Heritage Places Register, the Heritage Council shall—

- (a) obtain such information about the public attitude to its proposals as the Heritage Council considers appropriate; and
- (b) consider that information.

(2) Before notifying an interim Heritage Places Register under section 60, the Heritage Council shall consult with, and consider the views of, any person whose interests, in the opinion of the Heritage Council based on reasonable grounds, would be affected by its proposals.

(3) This section does not apply where subsection 57 (1) applies.

### **Application for inclusion of places in interim Register**

**59.** (1) A person may apply in writing to the Heritage Council for the inclusion of a provision in an interim Heritage Places Register which would have the effect of including an entry in relation to that place on the Heritage Places Register.

(2) An application shall be accompanied by a statement of the reasons why the applicant considers that the place should be included on the Heritage Places Register.

(3) On application in accordance with this section, the Heritage Council may, in consideration of the matters referred to in section 56—

- (a) include a provision in an interim Heritage Places Register which would have the effect of including an entry in relation to the relevant place in the Heritage Places Register; or
- (b) refuse to approve the application.

(4) The Heritage Council shall give a written notice of its decision under subsection (3) to the applicant.

(5) A notice under subsection (4) shall include—

- (a) a statement of the reasons for the decision that includes the findings of the Heritage Council on material questions of fact and refers to the evidence or other material on which those findings were based;
- (b) if the application is approved—details of the provision proposed for inclusion in an interim Heritage Places Register in accordance with the approval; and
- (c) if the application is refused—a statement to the effect that, subject to Part VIA, the applicant may apply to the Appeals Board for a review of the decision of the Heritage Council to refuse the application.

(6) This section is not to be read as limiting the power of the Heritage Council to prepare interim Heritage Places Registers.

**Public notification**

**60. (1)** After preparing an interim Heritage Places Register, the Heritage Council shall cause to be published in the *Gazette*, and in a daily newspaper, a notice—

- (a) stating that copies of the interim Register are available for public inspection at specified places;
- (b) specifying, for the purpose of section 55, the maximum period during which the interim Register, or each part of it, is to have effect under that section; and
- (c) including—
  - (i) a statement of the effect of section 55; and
  - (ii) a statement to the effect that, subject to Part VIA, a person whose interests in relation to land are affected may apply to the Appeals Board for a review of a decision of the Heritage Council to include a provision in the interim Register.

**(2)** The Heritage Council shall make copies of the interim Heritage Places Register available for public inspection during office hours at the places specified in the notice under subsection (1).

**(3)** A copy of an interim Heritage Places Register made available for public inspection under subsection (2) shall not include any restricted information in relation to an Aboriginal place.

**(4)** The validity of a decision of the Heritage Council to include a provision in an interim Register is not affected by a failure to comply with paragraph (1) (a) or (c) or subsection (2) or (3).

**Notification of lessees and occupiers**

**61. (1)** As soon as practicable after a notice is published in the *Gazette* under section 60 in relation to an interim Heritage Places Register, the Heritage Council shall give each lessee, and each occupier, of land affected by a decision of the Heritage Council to include a provision in the interim Register a notice—

- (a) specifying that provision;
- (b) specifying, and identifying as such, any relevant restricted information about Aboriginal places on that land;
- (c) including the statements referred to in paragraph 60 (1) (c) in relation to the interim Register; and

- (d) including a statement of the effect of section 84 in relation to the publication of restricted information.

(2) The validity of a decision of the Heritage Council to include a provision in an interim Heritage Places Register is not affected by a failure to comply with subsection (1).

### **Revision of interim Register**

**62. (1)** After the notification of an interim Heritage Places Register under section 60, the Heritage Council may, by notice published in the *Gazette*, revise the interim Register—

- (a) to correct a formal error; or
- (b) except where subsection 57 (1) applies—to provide for the removal of a provision of the interim Register which would have had the effect of including an entry in the Heritage Places Register;

with effect from the date of the notice.

(2) The Heritage Council shall cause a copy of a notice under subsection (1) to be published in a daily newspaper.

(3) A notice under paragraph (1) (b) shall include—

- (a) a statement that copies of the interim Register, as revised, are available for public inspection at specified places;
- (b) a statement of the effect of section 55 in relation to the interim Heritage Places Register as revised; and
- (c) a statement to the effect that, subject to Part VIA, a person whose interests in relation to land are affected may apply to the Appeals Board for a review of the Heritage Council's decision to revise a provision of the interim Register.

(4) The Heritage Council shall make copies of the interim Heritage Places Register, as revised, available for public inspection during office hours at the places specified in the notice under subsection (3).

(5) Where paragraph (1) (b) applies, the Heritage Council shall give each lessee, and each occupier, of land affected by the decision of the Heritage Council to revise the interim Register a notice—

- (a) specifying the revision; and
- (b) including the statements referred to in subsection (3).

(6) The validity of a decision of the Heritage Council to revise a provision of an interim Heritage Places Register under paragraph (1) (b) is not affected by a failure to comply with subsection (2), (3), (4) or (5).

### **Submission of interim Register to the Authority**

**63. (1)** For the purposes of section 17, the Heritage Council shall submit an interim Heritage Places Register to the Authority in accordance with this section.

(2) The Heritage Council shall submit an interim Heritage Places Register to the Authority after the expiration of 28 days after the interim Register is notified in the *Gazette* under subsection 60 (1), except where there is an application for review under paragraph 86 (2) (a) or (b) in relation to the interim Register.

(3) Where there is an application for review under paragraph 86 (2) (a) or (b) in relation to an interim Heritage Places Register, the Heritage Council shall—

- (a) in relation to those provisions of the interim Register which are not the subject of such an application—submit those provisions to the Authority after the expiration of 28 days after the interim Register is notified in the *Gazette* under subsection 60 (1); and
- (b) in relation to each provision of the interim Register which is the subject of such an application—where appropriate, submit that provision to the Authority, as varied (if at all) to reflect the Appeals Board's decision, after the resolution of the application.

(4) Where there is an application under subsection 86 (3) for the review of a decision of the Heritage Council to refuse to approve an application under section 59 for the inclusion of a provision in an interim Heritage Places Register—

- (a) subsection (1) applies notwithstanding the application for review; and
- (b) if the application for review is successful—the Heritage Council shall submit that provision to the Authority in the form approved by the Appeals Board in its decision.

(5) Where there is an application under paragraph 86 (2) (c) for the review of a decision of the Heritage Council to revise an interim Heritage Places Register so as to remove a provision—

- (a) subsection (1) applies notwithstanding the application; and

- (b) if the application is successful—the Heritage Council shall submit that provision to the Authority as reinstated in the interim Register in accordance with the decision of the Appeals Board.

***Division 4—Acquisition of heritage places and objects***

**Acquisition**

**64. (1)** The Executive may, on behalf of the Territory, acquire a place listed on the Heritage Places Register where the Executive is satisfied that—

- (a) the place has substantial heritage significance;
- (b) acquisition is the most prudent and feasible means to ensure the conservation of that significance; and
- (c) it is in the public interest for the Territory to acquire the place.

**(2)** Where subsection (1) applies in relation to a place, the Executive may acquire an object identified in the Heritage Places Register as intrinsic to the heritage significance of that place.

**(3)** The Executive shall acquire a place or an object under this section on just terms.

**(4)** The Executive shall not acquire a place or an object under this section without first consulting with, and considering the views of—

- (a) the lessee and the occupier of the place;
- (b) where an object is to be acquired—the owner and the possessor of the object;
- (c) the Heritage Council; and
- (d) any relevant Aboriginal organisation;

about the proposed acquisition.

**Notice of acquisition**

**65. (1)** Where the Executive makes a decision to acquire a place or an object under section 64, the Minister shall, within 28 days after the date of the decision, cause notice in writing of the decision to be given to—

- (a) the lessee and the occupier of the place; and
- (b) where an object is acquired—the owner and the possessor of the object.

(2) A notice shall—

- (a) include a statement of the reasons of the Executive for its decision to acquire the place or object; and
- (b) a statement to the effect that, subject to Part VIA, an application may be made to the Appeals Board for a review of the decision to acquire the place or object or to acquire it on particular terms.

(3) The validity of a decision referred to in subsection (1) is not affected by a failure to comply with this section.

### *Division 5—Aboriginal heritage*

#### *Subdivision A—Preliminary*

#### **Interpretation**

**66. (1)** In this Division, unless the contrary intention appears—

“interim Register” means an interim Heritage Places Register;

“Register” means the Heritage Places Register.

(2) In this Division, a reference to a registered place is to be read as a reference to a place in relation to which—

- (a) there is an entry in a Register; or
- (b) there is a provision in an interim Register which would have the effect of including such an entry in a Register;

and a reference to—

- (c) an unregistered place; or
- (d) the registration of a place;

is to be read accordingly.

### *Subdivision B—Reporting discoveries of unregistered*

#### *Aboriginal places*

#### **Reports**

**67. (1)** A person who discovers a place which he or she believes on reasonable grounds to be an unregistered Aboriginal place shall, within 7 days, report that discovery to the Minister in accordance with subsection (2).

(2) A report under subsection (1) shall—



- (a) be in writing;
- (b) specify the name and address of—
  - (i) the person giving the report; and
  - (ii) the lessee and each occupier of the land on which the place is located (where the identity of those persons is known to the person giving the report); and
- (c) specify the nature and location of the discovery.

**(3)** A person shall not, without reasonable excuse, fail to comply with subsection (1).

Penalty: \$500.

- (4)** This section does not apply in relation to a person who—
- (a) in accordance with Aboriginal tradition, has traditional affiliations with the land on which the place is located;
  - (b) believes on reasonable grounds that a declaration under paragraph 69 (1) (b) or 73 (1) (b) (that the place is not to be registered) is in force; or
  - (c) believes on reasonable grounds that the place has previously been registered.

**(5)** Notwithstanding paragraph (4) (a), a person who, in accordance with Aboriginal tradition, has traditional affiliations with particular land may, for the purposes of this Subdivision, report the discovery of an Aboriginal place on that land in accordance with subsection (1).

#### **Aboriginal heritage discoveries—consideration of reports**

**68. (1)** Upon receiving a report of a discovery under section 67, the Minister shall—

- (a) if the place is registered, or has previously been registered—give the lessee and the occupier of the land on which the place was discovered written notice of the details of that registration, including any relevant restricted information, together with a statement of the effect of that registration (where it is still in force); or
- (b) if the place has never been registered—direct the Heritage Council to report to the Minister within 21 days about the heritage significance of the place or object.

**(2)** The Heritage Council shall—

- (a) prepare a report for submission to the Minister in compliance with a direction under paragraph (1) (b); and
- (b) in preparing that report, consult with, and consider the views of—
  - (i) the lessee and the occupier of the place;
  - (ii) the person who reported the discovery; and
  - (iii) any relevant Aboriginal organisation.

**Aboriginal heritage discoveries—Ministerial directions and declarations**

**69. (1)** Within 14 days after receiving a report from the Heritage Council under section 68, the Minister shall—

- (a) direct the Heritage Council to notify an interim Register under section 60 which would have the effect of registering the place on particular terms; or
- (b) declare that the place is not to be registered, by notice in writing to—
  - (i) the lessee and the occupier of the land where the place was discovered;
  - (ii) the person who reported the discovery; and
  - (iii) any relevant Aboriginal organisation.

**(2)** Before making a decision under subsection (1), the Minister shall consult with the persons referred to in paragraph (1) (b).

**(3)** In making a decision under subsection (1), the Minister shall—

- (a) after taking into account the report of the Heritage Council—consider whether the place is of sufficient heritage significance to be registered; and
- (b) after taking into account the views of the persons consulted under subsection (2)—consider the effect of registration on those persons' interests.

**(4)** Where the Minister makes a decision under paragraph (1) (a), sections 60 and 61 apply in relation to a decision of the Minister under paragraph (1) (a) as if the references in those sections to a decision of the Heritage Council to include a provision in an interim Register were references to that decision of the Minister.

**(5)** The Minister shall cause particulars of a direction under paragraph (1) (a) and a declaration under paragraph (1) (b) to be published in the *Gazette* within 14 days after the making of the direction or declaration.

- (6) A declaration under paragraph (1) (b) shall include—
- (a) a statement of the reasons of the Minister for declaring that the place is not to be registered; and
  - (b) a statement to the effect that, subject to Part VIA, a person whose interests in relation to land are affected may apply to the Appeals Board for a review of the decision of the Minister to make the declaration.

*Subdivision C—Protection of unregistered Aboriginal heritage*

**Damaging unregistered Aboriginal places**

**70.** A person shall not without reasonable excuse, disturb, damage or destroy or cause or permit to be disturbed, damaged or destroyed an unregistered Aboriginal place, unless—

- (a) that place has previously been registered; and
- (b) that registration has been cancelled.

Penalty: \$5,000.

**Orders for the protection of unregistered Aboriginal places— application of Part VI**

**71. (1)** In this section—

“order” means an order referred to in subsection (2).

**(2)** The Executive may make an order under Division 3 of Part VI in relation to the disturbance, damage or destruction of an unregistered Aboriginal place except where—

- (a) a declaration under paragraph 69 (1) (b) or 73 (1) (b) is in force in relation to that place; or
- (b) the place has previously been registered.

**(3)** For the purposes of Division 3 of Part VI in its application to an order, the disturbance, damage or destruction referred to in subsection (2) is to be taken to be a controlled activity.

**(4)** In deciding whether to make an order, the Minister shall consider whether the relevant controlled activity is likely to affect adversely the heritage significance of the place.

**(5)** An order—

- (a) shall specify the grounds on which the order is made; and
- (b) may direct any person against whom it is made—
  - (i) to stop disturbing, damaging or destroying an unregistered Aboriginal place; or
  - (ii) not to commence disturbing, damaging or destroying such a place.

(6) An order shall remain in force for such period, not exceeding 35 days, as is specified in the order.

(7) Subsection 256 (5) does not apply in relation to an order for the purposes of this section.

#### **Orders—reports by Heritage Council**

**72. (1)** Where the Minister makes an order for the purposes of section 71, he or she shall direct the Heritage Council to report within 21 days about the heritage significance of the relevant place.

- (2) The Heritage Council shall—
  - (a) prepare a report for submission to the Minister in compliance with a direction under subsection (1); and
  - (b) in preparing that report, consult with, and consider the views of—
    - (i) the lessee and the occupier of the place;
    - (ii) the person who reported the discovery; and
    - (iii) any relevant Aboriginal organisation.

#### **Orders—Ministerial directions and declarations**

**73. (1)** Within 14 days after receiving a report from the Heritage Council under section 72, the Minister shall—

- (a) direct the Heritage Council to notify an interim Register under section 60 which would have the effect of registering the place on particular terms; or
- (b) declare, by notice in writing to the lessee and the occupier of the land where the place was discovered and to any relevant Aboriginal organisation, that the place is not to be registered.

(2) Before making a decision under subsection (1), the Minister shall consult with the persons referred to in paragraph (1) (b).

(3) In making a decision under subsection (1), the Minister shall—

- (a) taking into account the report of the Heritage Council—consider whether the place is of sufficient heritage significance to be registered;
- (b) taking into account the views of the persons consulted under subsection (2)—consider the effect of registration on those persons’ interests; and
- (c) taking into account that report and those views—consider whether there is any prudent and feasible alternative to the activity in relation to which the order is in force.

(4) Where the Minister makes a decision under paragraph (1) (a), sections 60 and 61 apply in relation to a decision of the Minister under paragraph (1) (a) as if the references in those sections to a decision of the Heritage Council to include a provision in an interim Register were references to that decision of the Minister.

(5) The Minister shall cause particulars of a direction under paragraph (1) (a) and a declaration under paragraph (1) (b) to be published in the *Gazette* within 14 days after the making of the direction or declaration.

(6) A declaration under paragraph (1) (b) shall include—

- (a) a statement of the reasons of the Minister for declaring that the place is not to be registered; and
- (b) a statement to the effect that, subject to Part VIA, a person whose interests in relation to land are affected may apply for a review of the decision of the Minister to make the declaration.

#### *Subdivision D—Compensation claims*

### **Interpretation**

74. In this Subdivision—

“compensation” means compensation under section 78.

### **Application**

75. This Subdivision applies where—

- (a) a person reports the discovery of an unregistered place in accordance with section 67;
- (b) an order referred to in subsection 71 (2) is made in relation to a place;
- (c) a place is registered in an interim Register pursuant to a direction under paragraph 69 (1) (a) or 73 (1) (a) following such a report or order; or
- (d) a place is registered in a Register as a result of its registration in an interim Register pursuant to such a direction.

**Right to compensation**

**76. (1)** In a circumstance in which this Subdivision applies, on application in accordance with subsection (4) the Minister shall, on behalf of the Territory, compensate the applicant for loss or damage—

- (a) directly attributable to that circumstance; and
- (b) which arises out of any contractual or statutory obligations incurred by the applicant prior to the occurrence of that circumstance.

**(2)** Where this Subdivision applies in relation to more than 1 circumstance relating to the same land—

- (a) the Minister may compensate the applicant under subsection (1) for the combined loss or damage directly attributable to that combination of circumstances; and
- (b) such compensation is only payable for loss or damage in relation to contractual or statutory obligations incurred by the applicant prior to the occurrence of the earliest of those circumstances.

**(3)** Where an order referred to in section 71 is made against a person, no compensation is payable to that person for any loss or damage attributable to that order being made, or to any subsequent registration of the relevant place, which arises out of an obligation incurred by the applicant where, at the time the obligation was incurred, the applicant believed that the relevant place was an Aboriginal place.

**(4)** An application for compensation shall be made within 1 year of the date of occurrence of the latest of the relevant circumstances by virtue of which this Subdivision applies.

(5) Where this Subdivision applies, no amount for damages or compensation is payable to any person by reason only of the circumstances of that application, except under this Subdivision.

**Loss for which compensation is recoverable**

**77. (1)** Compensation is only payable for loss or damage attributable to the application of this Subdivision which—

- (a) is capable of being assessed by way of a liquidated amount;
- (b) takes into account any opportunity for recovery of taxes or diminution of tax liabilities; and
- (c) is not otherwise capable of recovery or mitigation, or further recovery or mitigation.

**(2)** Loss for which compensation is payable includes—

- (a) expenditure incurred in the preparation of plans for the purposes of any work in relation to which the compensation is sought;
- (b) any other expenditure necessarily preparatory to carrying out that work; and
- (c) the cost of acquisition of any land or object, including any incidental costs.

**(3)** Loss for which compensation is payable does not include—

- (a) any capital costs or capital depreciation except for expenditure or costs referred to in subsection (2); or
- (b) any amount in relation to the prospective use of the land in relation to which this Subdivision applies, except where—
  - (i) that land is registered in a Register; and
  - (ii) that use is consistent with the requirements of the Register.

**Amount of compensation**

**78. (1)** Subject to section 77, where the Minister decides that compensation should be paid to an applicant, the Territory shall pay the applicant such amount as is determined by the Minister by notice in writing to the applicant.

**(2)** Where an applicant, by notice in writing to the Minister, disputes the amount of compensation determined under subsection (1), the Minister may, by

notice in writing to the applicant, revise that determination in accordance with a determination—

- (a) of a valuer appointed by agreement between the Minister and the applicant; or
- (b) arrived at by such other method as is agreed upon between the Minister and the applicant.

### **Consultation with applicants**

**79.** Before giving an applicant for compensation a notice under section 80, the Minister shall—

- (a) consult with the applicant; and
- (b) consider the views of the applicant;

about the Minister's proposed decision.

### **Notice of decisions about compensation**

**80. (1)** Within 60 days after receiving an application for compensation, the Minister shall give the applicant written notice of his or her decision in relation to the application.

**(2)** Where the Minister decides to refuse to grant an applicant any compensation, the notice under subsection (1) shall include—

- (a) a statement of the Minister's reasons for his or her decision; and
- (b) a statement to the effect that, subject to Part VIA, the applicant for compensation may apply to the Appeals Board for a review of the Minister's decision.

**(3)** The validity of a decision to refuse to grant an applicant compensation is not affected by a failure to comply with subsection (2).

### ***Subdivision E—Consultation in relation to Registers***

#### **Consultation with Aboriginal organisations**

**81. (1)** This section applies where the Heritage Council is preparing an interim Register, or a revision to an interim Register, which relates to an Aboriginal place.

**(2)** Where this section applies, the Heritage Council shall consult with, and consider the views of, any relevant Aboriginal organisation about the effect of the interim Register or revision on Aboriginal tradition.



(3) In this section—

“Aboriginal place” includes a place which the Heritage Council at one time considered to be an Aboriginal place, but which the Heritage Council no longer considers to be such a place.

***Subdivision F—Restricted information***

**Restricted information**

**82. (1)** Where, in the Minister’s opinion, the public disclosure of particular information about the location or nature of an Aboriginal place would be likely to have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the place;

the Minister shall, in writing, declare that information to be restricted information for the purposes of this Act.

**(2)** The Minister shall not make a declaration under subsection (1) without first consulting with, and considering the views of—

- (a) the Heritage Council; and
- (b) any relevant Aboriginal organisation;

about the relevant information.

**(3)** The Minister shall give a copy of a declaration under subsection (1) to—

- (a) the lessee and the occupier of any land in relation to which the declaration is given;
- (b) the Heritage Council; and
- (c) any relevant Aboriginal organisation.

**(4)** A copy of a declaration given to a person under paragraph (3) (a) shall be accompanied by—

- (a) a statement of the effect of the declaration;
- (b) a statement of the Minister’s reasons for making the declaration; and
- (c) a statement to the effect that, subject to Part VIA, the person may apply to the Appeals Board for a review of the decision of the Minister to make the declaration.

(5) The validity of a decision of the Minister to make a declaration under subsection (1) is not affected by a failure to comply with subsections (2), (3) and (4).

### **Publication of restricted information by public officials**

**83. (1)** The Territory, the Executive, a Minister or a Territory authority shall not publish or cause to be published any restricted information about an Aboriginal place except—

- (a) for the purposes of this Part or Part II;
- (b) in accordance with subsection (2); or
- (c) in accordance with the prescribed procedures.

(2) For the purposes of paragraph (1) (b), restricted information may be published where the person or body responsible for its publication is satisfied on reasonable grounds that the publication would not have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the relevant place.

### **Publication of restricted information generally**

**84. (1)** A person (other than a person referred to in subsection 83 (1)) shall not, without reasonable excuse, publish or cause to be published restricted information about an Aboriginal place except—

- (a) in accordance with an approval under subsection (2); and
- (b) where that publication is accompanied by a written statement in the form referred to in paragraph 82 (4) (a).

Penalty: \$500.

(2) On application in accordance with subsection (3), the Heritage Council shall, by notice in writing to the applicant, approve the publication of restricted information about an Aboriginal place where it is satisfied on reasonable grounds that the publication would not have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the relevant place.

(3) An application under subsection (2) shall be in writing specifying—

- (a) the nature of the restricted information;

- (b) the reason for the proposed publication; and
- (c) the nature of the proposed publication, including the person, persons or class of persons to whom or to which it is directed.

(4) If the Heritage Council refuses an application under this section, it shall give written notice of its decision to the applicant including—

- (a) a statement of the Council's reasons for its decision; and
- (b) a statement to the effect that, subject to Part VIA, the applicant may apply to the Appeals Board for a review of the Council's decision.

#### **Access to restricted information**

**85. (1)** On application in accordance with subsection (2) by—

- (a) a lessee or an occupier of land; or
- (b) where an interest in relation to land is being offered for sale—a person who is considering purchasing that interest;

the Heritage Council shall publish to that person any restricted information relevant to the conservation and use of that land.

(2) An application shall be in writing accompanied by a written declaration—

- (a) in the case referred to in paragraph (1) (a)—specifying the capacity in which the applicant is applying; or
- (b) in the case referred to in paragraph (1) (b)—specifying the interest being offered for sale, and stating that the applicant is considering the purchase of that interest.

(3) Where the Heritage Council publishes restricted information to a person under subsection (1), it shall give the person a statement in the form referred to in paragraph 82 (4) (a).

### ***Division 6—Administrative review***

#### **Review of decisions**

**86. (1)** Application may be made to the Appeals Board for review of a decision—

- (a) of the Executive under section 64 to acquire a place; or
- (b) of the Executive under section 64 to acquire a place on particular terms.

(2) A person whose interests in relation to land are affected may apply to the Appeals Board for review of a decision—

- (a) of the Heritage Council to include a provision in an interim Heritage Places Register notified under section 60;
- (b) of the Minister under paragraph 69 (1) (a) or 73 (1) (a) to direct the Heritage Council to notify an interim Heritage Places Register;
- (c) of the Heritage Council under paragraph 62 (1) (b) to revise an interim Heritage Places Register; or
- (d) of the Minister under paragraph 69 (1) (b) or 73 (1) (b) to declare that no interim Heritage Places Register is to be notified in relation to a particular place.

(3) An applicant for the inclusion of a provision in an interim Heritage Places Register under subsection 59 (3) may apply to the Appeals Board for review of a decision of the Heritage Council to refuse the application.

(4) An applicant for compensation under Subdivision D of Division 5 may apply to the Appeals Board for review of a decision of the Minister to refuse to grant compensation under that Subdivision.

(5) A person whose interests in relation to land are affected by a decision of the Minister to make a declaration under subsection 82 (1) may apply to the Appeals Board for review of that decision.

(6) An applicant for an approval to publish restricted information under subsection 84 (2) may apply to the Appeals Board for review of a decision of the Heritage Council to refuse to grant that approval.

### ***Division 7—Public access to heritage information***

#### ***Subdivision A—Information about administrative action***

#### **Application**

**87.** This Subdivision applies in relation to the following documents:

- (a) reports under section 67;
- (b) declarations under paragraph 69 (1) (b), while the declarations are in force;
- (c) orders referred to in section 71, while the orders are in force;
- (d) declarations under paragraph 73 (1) (b), while the declarations are in force.

### **Searching administrative records**

**88. (1)** A person may, during office hours, inspect a document to which this Subdivision applies, excluding any part of the document which—

- (a) contains restricted information; or
- (b) contains information which is the subject of a declaration under subsection (3).

**(2)** On application by a person, accompanied by the determined fee, the Minister shall give the person a copy of a document to which this Subdivision applies, or any part of such document, excluding any part of the document which—

- (a) contains restricted information; or
- (b) contains information which is the subject of a declaration under subsection (3).

**(3)** The Minister may, by written notice to the applicant, declare that a document to which this Subdivision applies, or a specified part of such a document, is not to be available for public inspection under subsection (1) or (2).

**(4)** The Minister shall only make a declaration under subsection (3) if he or she is satisfied that—

- (a) information in the relevant application or part—
  - (i) relates to the personal or business affairs of a person; and
  - (ii) was supplied to the Minister in confidence; and
- (b) the publication of that information would not be in the public interest.

### ***Subdivision B—Access to Heritage Registers***

#### **Searching the Heritage Registers**

**89. (1)** A person may, during office hours, inspect the Register or interim Register, other than any part which contains restricted information.

**(2)** On application by a person, accompanied by the determined fee, the Heritage Council shall give the person a copy of, or of any part of, the Register or interim Register, other than any part which contains restricted information.

**(3)** On application to the Heritage Council accompanied by the determined fee, in relation to a place which—

- (a) is not listed in the Register or interim Register; and

- (b) is not, in an interim Register, proposed to be listed in the corresponding Register;

the Heritage Council shall give the applicant a certificate stating—

- (c) whether a declaration in relation to that place is in force under paragraph 69 (1) (a) or 73 (1) (a); or
- (d) whether the place has previously been so listed, or proposed to be so listed.

(4) In this section—

“interim Register” means the interim Heritage Places Register;

“Register” means the Heritage Places Register.

***Division 8—Australian Capital Territory Heritage Council***

***Subdivision A—Preliminary***

**Interpretation**

**90.** In this Division, unless the contrary intention appears—

“appointed member” means a member appointed under paragraph 97 (1) (b);

“Chairperson” means the Chairperson of the Heritage Council;

“Deputy Chairperson” means the Deputy Chairperson of the Heritage Council;

“deputy member” means a deputy member of the Heritage Council;

“ex-officio member” means a member referred to in paragraph 97 (1) (a);

“member” means a member of the Heritage Council;

“Secretary” means the Secretary to the Heritage Council.

***Subdivision B—Establishment, functions and powers***

**Establishment**

**91.** There is established by this section a council called the Australian Capital Territory Heritage Council.

**Functions**

**92.** The functions of the Heritage Council are—

- (a) to advise the Minister about—
  - (i) the criteria according to which the heritage significance of places and objects is to be determined for the purposes of this Part and the *Heritage Objects Act 1991*;
  - (ii) incentives for the conservation of the heritage significance of heritage places and heritage objects;
  - (iii) promotion of public awareness of heritage places and heritage objects; and
  - (iv) other matters in relation to heritage significance in the Territory;
- (b) at the request of a Territory authority—to advise the authority about the matters and incentives referred to in paragraph (a) as they relate to the exercise or performance of the authority's powers or functions under this or any other Act;
- (c) to prepare an initial interim Heritage Places Register and an initial interim Heritage Objects Register and, subsequently, to prepare interim variations to the Heritage Places Register and the Heritage Objects Register; and
- (d) such other functions as are conferred on it by or under this or any other Act.

### **Ministerial directions**

**93.** (1) The Minister may give the Heritage Council directions in writing—

- (a) about the policy and objectives it should pursue in the performance of its functions; or
- (b) to review the Heritage Places Register or the Heritage Objects Register, or any specified parts of either Register, in consideration of any specified matters.

(2) The Minister shall cause particulars of any directions to be published in the *Gazette* within 14 days of their being given.

(3) The Heritage Council shall comply with any directions published in accordance with subsection (2).

(4) The Heritage Council shall publish particulars of any directions given in a financial year in its annual report for that year.

**Powers**

**94.** The Heritage Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

**Annual reports**

**95.** The Heritage Council shall, after each 30 June, prepare and furnish to the Minister a report of the operations of the Heritage Council during the year ending on that date.

**Delegation to Secretary**

**96.** The Heritage Council may, by resolution at a properly constituted meeting, delegate to the Secretary any of its powers or any functions referred to in paragraph 92 (d).

*Subdivision C—Constitution and meetings***Constitution**

**97. (1)** The Heritage Council is constituted by—

- (a) the Chief Planner and the Conservator as ex-officio members; and
- (b) not more than 9 other members appointed by the Minister in writing.

**(2)** An ex-officio member shall not vote on any question in relation to an interim Heritage Places Register.

**(3)** The performance of the functions or the exercise of the powers of the Heritage Council is not affected by reason only of a vacancy or vacancies in the membership of the Heritage Council.

**Deputy ex-officio members**

**98. (1)** The Minister may, in writing, appoint a person to be the deputy of an ex-officio member.

**(2)** In the absence of a member from a Heritage Council meeting, any person appointed under subsection (1) to be the member's deputy has all the powers of the member.

**Expert appointments**

**99. (1)** In making appointments under paragraph 97 (1) (b) or subsection 98 (1) or 107 (1), the Minister shall endeavour to ensure that the following



disciplines and areas of expertise are represented amongst the appointed members of the Heritage Council:

- (a) archaeology;
- (b) Aboriginal tradition;
- (c) local history;
- (d) town planning;
- (e) engineering;
- (f) architectural history and conservation;
- (g) landscape architecture;
- (h) the natural environment and its conservation;
- (j) archivism;
- (k) librarianship;
- (m) preservation of Australian material culture;
- (n) knowledge of objects in an Australian context.

(2) A retiring appointed member is eligible for re-appointment for 1 term initially, and for a further 2 terms after the expiration of 3 years following the expiration of the initial re-appointment.

### **Terms of appointment**

**100. (1)** Members hold office as part-time members.

(2) An appointed member holds office—

- (a) for such period, not exceeding 3 years, as is specified in the instrument of appointment; and
- (b) on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

### **Chairperson, Deputy Chairperson and Secretary**

**101. (1)** The Minister shall appoint from the members—

- (a) a Chairperson; and
- (b) a Deputy Chairperson.

(2) The Minister shall appoint a public servant who is not a member to be Secretary to the Heritage Council.

### **Remuneration and allowances**

**102. (1)** Appointed members shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply—

- (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the appointed members; or
- (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the appointed members.

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal of the Commonwealth.

### **Leave of absence**

**103.** The Minister may, by writing, grant leave of absence to a member on specified terms and conditions as to remuneration (subject to section 102) or otherwise.

### **Disclosure of interests**

**104. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Heritage Council shall, as soon as practicable after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a Heritage Council meeting.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Minister otherwise determines, the member shall not—

- (a) be present during any deliberation of the Heritage Council with respect to that matter; or
- (b) take part in any decision of the Heritage Council with respect to that matter.

### **Resignation**

**105.** A member may resign his or her office by writing signed by the member and delivered to the Minister.

### **Termination of appointment**

**106. (1)** The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

**(2)** If a member—

- (a) is absent, except on leave granted under section 103, from 3 consecutive meetings of the Committee; or
- (b) without reasonable excuse, contravenes section 104;

the Minister shall terminate the appointment of the member.

### **Acting members**

**107. (1)** The Minister may appoint a person to act as a member—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the member is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

**(2)** Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### **Convening meetings**

**108. (1)** The Chairperson, or, if he or she is unable to do so, the Deputy Chairperson, shall convene such Heritage Council meetings—

- (a) as the Chairperson or the Deputy Chairperson considers necessary for the efficient performance of its functions; and
- (b) as the Minister directs by notice in writing given to the Chairperson or the Deputy Chairperson.

(2) Where the Chairperson or the Deputy Chairperson proposes to convene a meeting of the Heritage Council, he or she shall, not later than 5 days before the date of the proposed meeting, give each member a notice in writing specifying—

- (a) the date, time and place of the meeting; and
- (b) the matters to be considered at the meeting.

### **Procedure at meetings**

**109. (1)** The Chairperson shall preside at all Heritage Council meetings at which he or she is present.

(2) Where the Chairperson is not present at a meeting the Deputy Chairperson shall preside.

(3) Where the Chairperson and the Deputy Chairperson are both absent from a meeting, the members present shall elect 1 of their number to preside.

(4) The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.

(5) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

(6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

(7) The Heritage Council shall keep minutes of its proceedings.

### **Quorum**

**110.** At a meeting of the Heritage Council, a majority of the members currently appointed to the Council constitutes a quorum.

## **PART IV—ENVIRONMENTAL ASSESSMENTS AND INQUIRIES**

### ***Division 1—Preliminary***

#### **Interpretation**

**111.** In this Part, unless the contrary intention appears—

“defined decision” means a decision of the Territory, the Executive, a Minister or a Territory authority about a proposal, being a proposal in relation to which a Minister is empowered under Part II, V or VI, an Act other than this Act or a subordinate law—

- (a) to direct that an Assessment be made; or

- (b) to establish a panel to conduct an Inquiry;

“environmental impact”, in relation to a proposal which is the subject of a defined decision, includes the following potential effects of the proposal (if carried out), either by itself or in combination with the potential effects of another such proposal:

- (a) environmental effect on a community;
- (b) physical, biological or cultural transformation of an area;
- (c) environmental effect on the social system or the ecosystems of an area;
- (d) change to the aesthetic, recreational, scientific or other environmental qualities, or values, of an area;
- (e) environmental effect on any premises or land or the surroundings of any premises or land, that has heritage significance;
- (f) the endangering, or further endangering, of a community or an area;
- (g) the endangering, or further endangering, of any species of fauna or flora;
- (h) long-term environmental effects including those with potential to place demands on the social system;
- (i) curtailing of the range of beneficial uses of the environment;
- (j) pollution;
- (k) problems associated with the disposal of waste;
- (l) increased demands on natural resources which are, or are likely to be, in short supply;
- (m) change to the values or lifestyles of particular groups and communities or to existing social relationships;
- (n) socio-economic effect;

“environmental impact statement” means an environmental impact statement prepared in accordance with Division 3;

“Environment Minister” means the Minister administering this Part;

“land” includes water;

“panel” means a panel established to conduct an Inquiry;

“preliminary assessment” means an assessment made under Division 2;

“proponent”, in relation to a defined decision, means the person designated as such under section 112;

“public environment report” means a public environment report prepared in accordance with Division 3;

“relevant Minister”, means the Minister responsible for the administration of the Act or subordinate law under which—

- (a) in relation to an Assessment or Inquiry—that Assessment or Inquiry is authorised to be made or conducted; or
- (b) in relation to a defined decision—the relevant decision is authorised to be made.

### **Proponents**

**112. (1)** For the purposes of this Part, the relevant Minister in relation to a defined decision may, in writing, designate a person or Territory authority as the proponent in relation to the decision.

**(2)** The relevant Minister shall designate, as the proponent in relation to a defined decision, the person or Territory authority whose interests would be most directly affected by the decision, unless, in the opinion of that Minister, the public interest requires otherwise.

### ***Division 2—Preliminary assessments***

#### **Directions**

**113.** The relevant Minister in relation to a defined decision, or the Environment Minister, may, by written notice to the relevant proponent within 28 days after the day which the decision that a preliminary assessment be required is made, direct the proponent to prepare a preliminary assessment of the environmental impact of the relevant proposal.

#### **Mandatory preliminary assessments**

**114.** Where a defined decision is of a class prescribed by the Plan, the relevant Minister shall, within the period referred to in section 113, issue a notice under that section in relation to the relevant proposal.

## **Content**

**115.** A preliminary assessment shall consist of the matters specified in Schedule 3.

## **Submission to Minister**

**116. (1)** Upon notice under section 113, the proponent shall submit a preliminary assessment to the Environment Minister in accordance with the notice.

**(2)** Where the Environment Minister is not the relevant Minister in relation to a preliminary assessment, the Environment Minister shall forward the preliminary assessment to the relevant Minister.

## **Public inspection**

**117. (1)** A proponent who has submitted a preliminary assessment to the Environment Minister in accordance with a notice under section 113 shall cause to be published in the *Gazette*, and in a daily newspaper, a notice approved by the Environment Minister stating that copies of the preliminary assessment are available for public inspection and purchase from the proponent at specified places and times.

**(2)** A proponent who has published a notice pursuant to subsection (1) shall—

- (a)** make copies of the preliminary assessment available for inspection and purchase at the places and times specified in the notice; and
- (b)** give a copy of the preliminary assessment, without charge, to the Librarian, ACT Library Service and to the Conservation Council of the South-East Region and Canberra (Inc.).

**(3)** A copy of a preliminary assessment made available by a proponent for sale pursuant to this section shall not be sold at a price that exceeds a price fixed by the Environment Minister as the maximum price for the sale of a copy of the assessment.

**(4)** In fixing a maximum price at which a proponent may sell a copy of a preliminary assessment, the Environment Minister shall fix a price that will reimburse the proponent for the cost of producing the copy but not for any expense incurred by the proponent in preparing the preliminary assessment.

**(5)** Where the Environment Minister makes a decision fixing the maximum price that a proponent may charge for a copy of a preliminary assessment, he or she shall give the proponent notice in writing of the amount so fixed.

- (6) A notice under subsection (5) shall include—
- (a) particulars of the calculation of the amount fixed as the maximum price that the proponent may charge for a copy of the preliminary assessment; and
  - (b) a statement to the effect that, subject to Part VIA, the proponent may apply to the Appeals Board for a review of the decision of the Environment Minister fixing that maximum price.

### **Exclusion of material**

**118. (1)** Where, in the opinion of the Environment Minister based on reasonable grounds—

- (a) a part of a preliminary assessment contains information related to the personal or business affairs of a person, being information—
  - (i) supplied to the proponent or the Minister in confidence;
  - (ii) the publication of which would reveal a trade secret; or
  - (iii) the disclosure of which would, or would reasonably be expected to, adversely affect a person in respect of the lawful business affairs of that person; and
- (b) it would not be in the public interest for that part to be published;

the Environment Minister shall cause that part to be excluded from each copy of the preliminary assessment made available to the public or for public inspection.

(2) Where a part of a preliminary assessment is excluded from the copies of that assessment made available to the public or for public inspection, each copy shall include a statement to the effect that an unspecified part of the assessment has been excluded for the purpose of protecting the confidentiality of information included in that part.

### ***Division 3—Assessments***

#### ***Subdivision A—Form and content***

### **Form**

**119.** Unless otherwise specified in the Act or subordinate law under which it is directed, an Assessment consists of—

- (a) a public environment report; or
- (b) an environmental impact statement;



about the proposal which is the subject of a defined decision, together with the report under section 131 evaluating that public environment report or environmental impact statement.

### **Content of public environment reports and environmental impact statements**

**120.** Public environment reports and environmental impact statements are each to include such matters as are—

- (a) prescribed; and
- (b) directed under section 123.

### ***Subdivision B—Direction of Assessments***

#### **Decisions to direct Assessments**

**121. (1)** Within the prescribed period after a proponent submits a preliminary assessment to the Environment Minister, the relevant Minister may direct that an Assessment be made of the proposal if, in the opinion of the relevant Minister based on reasonable grounds, the environmental impact of the proposal would be of sufficient significance.

**(2)** In making a decision under subsection (1), the relevant Minister shall consider—

- (a) the preliminary assessment;
- (b) the report of any meeting convened under section 128; and
- (c) whether any aspect of the environmental impact of that proposal is, or could be, the subject of—
  - (i) an Inquiry or another Assessment; or
  - (ii) any environmental assessment action taken by or on behalf of the Commonwealth, a State or the Northern Territory.

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

#### **Environment Minister's power to direct Assessments**

**122.** Where 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 that power.

**Directions**

**123. (1)** A direction by a Minister that an Assessment be made in relation to a defined decision shall—

- (a) be in writing given to the proponent; and
- (b) specify—
  - (i) the form of the Assessment;
  - (ii) the matters to be included in the public environment report or the environmental impact statement (as the case requires), and the relative emphasis to be given to each such matter;
  - (iii) subject to section 124 or sections 125 and 126, as the case requires—the manner in which the report or statement is to be prepared; and
  - (iv) where, in the opinion of the Environment Minister based on reasonable grounds, the environmental impact of a proposal which is the subject of another defined decision is relevant to the environmental impact of the relevant proposal—sufficient details of the first-mentioned proposal to enable the proponent to assess the potential combined effects of the proposals.

**(2)** The Environment Minister shall, in consultation with the relevant Minister, determine the matters to be specified under paragraph (1) (b).

**(3)** Where a Minister gives a direction that an Assessment be made, he or she shall cause to be published in the *Gazette*, and in a daily newspaper, a notice that sets out—

- (a) the name of the proponent;
- (b) the matters specified in the direction pursuant to paragraph (1) (b); and
- (c) the name of any consultant nominated by the Minister pursuant to subsection (4) to assist in the preparation of the Assessment.

**(4)** A Minister who directs that an Assessment be made may, under subparagraph (1) (b) (iii), direct the proponent in relation to an Assessment to engage the services of a consultant specified by the Minister in accordance with the prescribed criteria to assist the proponent in the preparation of the Assessment.

***Subdivision C—Preparation, evaluation and consideration by the Legislative Assembly***

**Public environment reports—preparation**

**124. (1)** The Environment Minister may, in writing, direct the proponent in relation to a public environment report—

- (a) to undertake such consultation in relation to the preparation of the report as is specified; and
- (b) after any such consultation—to make the report available, in a specified manner and form, for public inspection, with such notice of that availability as is specified.

**(2)** The proponent in relation to a public environment report shall comply with a direction under subsection (1).

**(3)** This section does not apply in relation to the preparation of a public environment report for the purposes of an Assessment which will be—

- (a) a background paper within the meaning of Part II; or
- (b) notified together with a draft Plan of Management under Division 5 of Part V.

**Environmental impact statements—consultation and public inspection**

**125. (1)** The proponent in relation to an environmental impact statement shall cause to be published in the *Gazette*, and in a daily newspaper, a notice approved in writing by the Environment Minister—

- (a) stating that copies of the draft environmental impact statement are available for public inspection and purchase from the proponent at specified places and times; and
- (b) inviting interested persons to submit written comments about the draft to the proponent at a specified address and within a period of 28 days or such longer period as is directed in writing by the relevant Minister.

**(2)** The proponent in relation to an environmental impact statement shall make copies of the draft statement available for inspection and purchase at the places and times specified in the notice under subsection (1).

**(3)** A proponent shall not sell a copy of a draft environmental impact statement that he or she has made available for purchase pursuant to subsection (2) at a price that exceeds a price fixed by the Environment Minister as the maximum price for the sale of a copy of the statement.

(4) In fixing a maximum price at which a proponent may sell a copy of a draft environmental impact statement, the Environment Minister shall fix a price that will reimburse the proponent for the cost of producing the copy but not for the expense incurred by the proponent in preparing the draft statement.

(5) Where the Environment Minister makes a decision fixing the maximum price that a proponent may charge for a copy of a draft environmental impact statement, he or she shall give the proponent notice in writing of the amount so fixed.

(5A) A notice under subsection (5) shall include—

- (a) particulars of the calculation of the amount fixed as the maximum price that the proponent may charge for a copy of the draft environmental impact statement; and
- (b) a statement to the effect that, subject to Part VIA, the proponent may apply to the Appeals Board for a review of the decision of the Environment Minister fixing that maximum price.

(6) This section does not apply in relation to the preparation of an environmental impact statement for the purposes of an Assessment which will be—

- (a) a background paper within the meaning of Part II; or
- (b) notified together with a draft plan of management under Division 5 of Part V.

### **Environmental impact statements—consideration of relevant comments and reports**

**126.** The proponent in relation to an environmental impact statement shall, in preparing the statement, consider any written comments from any person or Territory authority, and any reports, related to the environmental impact of the relevant proposal.

### **Submission of reports and statements to Environment Minister**

**127.** The proponent shall submit the relevant public environment report or environmental impact statement to the Environment Minister, together with—

- (a) a written report about the proponent's consultation in relation to the report or statement;
- (b) a copy of each written comment about the report or statement received by the proponent; and

- (c) a copy of each report referred to in section 126 which is not available to the public.

### **Consultation**

**128. (1)** The Environment Minister may, by giving reasonable notice to—

- (a) the proponent of a proposal that has an environmental impact;
- (b) any other person that the Environment Minister believes on reasonable grounds to have an interest directly affected by the proposal; and
- (c) any other person that the Environment Minister considers appropriate;

convene a meeting of such persons for the purposes of—

- (d) clarifying the proposal or concerns relating to the proposal;
- (e) clarifying the report of a panel established to conduct an Inquiry into the proposal; or
- (f) discussing any ways in which the proposal could be modified in order to reduce or eliminate any potential adverse environmental impact.

**(2)** The Environment Minister shall give a written report to each participant in the meeting stating—

- (a) the outcome of the meeting; and
- (b) any recommendations which the Environment Minister intends to include in his or her report under section 131 as a result of the meeting.

**(3)** Where a meeting recommends that a proposal be varied, the Minister shall cause copies of the report prepared in relation to the meeting for the purposes of subsection (2) to be made available for public inspection at times and places specified in a notice published in the *Gazette* and in a daily newspaper.

### **Further information**

**129. (1)** Within the prescribed period after the submission of a public environment report or an environmental impact statement to the Environment Minister, that Minister may, by notice in writing to the proponent, direct the proponent to provide further specified information in relation to the proposal, report or statement.

**(2)** Upon notice under subsection (1), the proponent shall, in writing, provide the specified information to the Environment Minister.

**Further revision**

**130. (1)** Within the prescribed period after the submission of a public environment report or an environmental impact statement to the Environment Minister, that Minister may, by notice in writing to the proponent, request the proponent to revise the report or statement in consideration of specified matters.

**(2)** Upon notice under subsection (1), the proponent may revise the report or statement in consideration of the specified matters.

**(3)** The proponent shall—

- (a)** if the report or statement is revised—re-submit the revised report or statement to the Environment Minister; or
- (b)** if the report or statement is not revised—submit a written report to the Environment Minister stating the reasons why the proponent has not revised the report or statement.

**Evaluation by Environment Minister**

**131. (1)** Unless subsection (2) applies, within the prescribed period after the submission of a public environment report or environmental impact statement to the Environment Minister, he or she shall prepare a written report evaluating it.

**(2)** Where the Environment Minister gives a notice to a proponent under subsection 130 (1), that Minister shall prepare a written report evaluating a public environment report or statement within the prescribed period after the proponent—

- (a)** re-submits the report or statement under paragraph 130 (3) (a); or
- (b)** submits a report under paragraph 130 (3) (b);

as the case requires.

**(3)** A report under subsection (1) shall include—

- (a)** a statement as to whether, in the opinion of the Environment Minister, the public environment report or environmental impact statement has been prepared in accordance with this Division, and with the relevant directions under this Division;
- (b)** any comment by that Minister about the environmental impact of the relevant proposal;

- (c) where that Minister has convened a meeting under section 128—the report of that meeting referred to in subsection 128 (2); and
- (d) any recommendation of that Minister about the conditions subject to which the proposal should be approved.

**Tabling in the Legislative Assembly and public inspection**

**132. (1)** Within 6 sitting days after the completion of a report referred to in section 131, the relevant Minister shall cause to be laid before the Legislative Assembly a copy of—

- (a) the relevant Assessment;
- (b) any notice given by the Environment Minister under section 129 or 130; and
- (c) any report, comment or written information submitted to the Environment Minister under section 127, 129 or 130.

**(2)** After an Assessment is completed, the relevant Minister shall make copies of the Assessment, together with copies of any notice, report, comment or written information referred to in paragraph (1) (b) or (c), available to the public during office hours at places and times specified in a notice published—

- (a) in the *Gazette*; and
- (b) in a daily newspaper.

**Exclusion of material**

**133. (1)** Where, in the relevant Minister’s opinion, based on reasonable grounds—

- (a) a part of an Assessment contains information related to the personal or business affairs of a person, being information—
  - (i) supplied to the proponent or that Minister in confidence; or
  - (ii) the publication of which would reveal a trade secret; and
- (b) it would not be in the public interest for that part to be published;

the relevant Minister shall cause that part to be excluded from the copy of the Assessment laid before the Legislative Assembly, and from any copy of the Assessment made available to the public or for public inspection.

**(2)** Where a part of an Assessment is excluded from the copies of that Assessment made available to the public or for public inspection, each copy shall include a statement to the effect that an unspecified part of the Assessment

has been excluded for the purpose of protecting the confidentiality of information included in that part.

### **Exemptions**

**134. (1)** The Environment Minister may, by instrument—

- (a) exempt a specified defined decision, or defined decisions of a specified class, from being the subject of an Assessment directed under any Act or subordinate law; or
- (b) declare that specified provisions of this Division are not to apply in relation to a specified Assessment, or to Assessments of a specified class.

**(2)** An instrument of exemption is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**(3)** Notwithstanding paragraph 6 (1) (b) of the *Subordinate Laws Act 1989* in its application to the instrument, an instrument of exemption takes effect (subject to the remaining provisions of section 6 of that Act) on the expiration of 5 sitting days after it is laid before the Legislative Assembly, or on such a later date as is specified in the instrument.

**(4)** Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to an instrument of exemption as if the references in those provisions to 15 sitting days were references to 5 sitting days.

**(5)** The Environment Minister shall cause an instrument of exemption to be notified in a daily newspaper.

**(6)** The validity of an instrument of exemption is not affected by a failure to comply with subsection (5).

### ***Division 4—Inquiries***

#### ***Subdivision A—Establishment of panels and terms of reference***

### **Constitution**

**135. (1)** Where the relevant Minister in relation to a defined decision decides to establish a panel to inquire into the proposal which is the subject of that decision he or she shall, in writing, appoint a person or persons to constitute a panel to conduct the Inquiry.



(2) The relevant Minister shall nominate 1 member (or, in the case of a panel constituted by 1 member, that member) of the panel as the presiding member.

### **Combined Inquiries**

**136.** Where 2 or more proposals, being the subject of 2 or more defined decisions, would in the opinion of the Environment Minister have substantially interconnected effects, he or she may, under section 135, with the consent of the relevant Minister in relation to each decision, establish a panel to conduct an Inquiry into the potential combined effect of those proposals.

### **Remuneration**

**137.** The Territory shall pay a member of a panel such remuneration as is determined in writing by the relevant Minister.

### **Terms of reference**

**138. (1)** The relevant Minister shall, in writing, determine the terms of reference of an Inquiry.

(2) The terms of reference of an Inquiry—

(a) shall—

- (i) specify the defined decision;
- (ii) require the panel to assess the potential costs and benefits to the community and to the Territory of the proposal which is the subject of that decision; and
- (iii) specify a reasonable period within which the panel is to report; and

(b) may require the panel—

- (i) to investigate specified aspects of that proposal; or
- (ii) to consider any specified report.

(3) The relevant Minister may, at the request of a panel, or on his or her own motion, by notice published in the *Gazette*, vary the terms of reference of the relevant Inquiry.

### **Notification**

**139.** The relevant Minister in relation to an Inquiry shall cause to be published a notice in the *Gazette* specifying—

- (a) the members of the panel, and the presiding member;
- (b) the terms of reference of the Inquiry;
- (c) the period within which the panel is to report; and
- (d) such other matters as that Minister considers necessary.

### ***Subdivision B—Inquiry reports***

#### **Inquiry reports**

**140.** A panel shall report its findings and recommendations in writing to the relevant Minister in accordance with the terms of reference determined under section 138.

#### **Tabling in the Legislative Assembly and public inspection**

**141. (1)** The relevant Minister shall cause a copy of the report of a panel's findings and recommendations to be laid before the Legislative Assembly within 6 sitting days of receiving the report.

**(2)** After a report is completed, the relevant Minister shall make copies of the report available to the public at places and times specified in a notice published—

- (a) in the *Gazette*; and
- (b) in a daily newspaper.

#### **Exclusion of material**

**142. (1)** Where, in the panel's opinion based on reasonable grounds and expressed in its report—

- (a) a part of a report contains information related to the personal or business affairs of a person, being information—
  - (i) supplied to the panel in confidence; or
  - (ii) the publication of which would reveal a trade secret; and
- (b) it would not be in the public interest for that part to be published;

the relevant Minister may cause that part of the report to be excluded from the copy laid before the Legislative Assembly, and from any copy made available to the public or for public inspection.

**(2)** Where a part of a report is excluded under subsection (1), each copy of the report laid before the Legislative Assembly or made available to the public

or for public inspection shall include a statement to the effect that an unspecified part of the report has been excluded for the purpose of protecting the confidentiality of information included in that part.

### ***Subdivision C—Procedures and powers***

#### **Interpretation**

**143. (1)** In this Subdivision, unless the contrary intention appears—

“authorised person” means—

- (a) a panel member; or
- (b) a person assisting a panel member in a manner authorised in writing by that member;

“place” includes any premises, land, vehicle, aircraft or vessel.

**(2)** Where an authorised person enters a place in accordance with this Subdivision, a reference in this Subdivision to the occupier of that place includes a reference to a person the authorised person believes on reasonable grounds to be the occupier, or to be in charge, of that place.

#### **Notice of Inquiry hearings**

**144.** At a reasonable time before the commencement of an Inquiry, the presiding member of a panel shall cause to be published in the *Gazette*, and in a daily newspaper, a notice stating—

- (a) the subject-matter of the Inquiry; and
- (b) the time and place at which the Inquiry is to commence.

#### **Public hearings**

**145. (1)** A panel shall conduct its Inquiry in public, except as provided by subsection (2).

**(2)** A panel may—

- (a) direct that the Inquiry or any part of it be held in private, and give directions about who may be present during any private hearing;
- (b) give directions prohibiting or restricting the publication of evidence given before the Inquiry, or of matters contained in documents lodged with the Inquiry; or

(c) give directions prohibiting or restricting the disclosure to any specified person of such evidence or such matters.

(3) In making a direction under subsection (2), a panel shall consider—

(a) the principle that it is desirable that the Inquiry should be held in public, and that evidence given before the Inquiry, and documents lodged with the Inquiry, should be available to interested persons and to the public; and

(b) in the circumstances, whether confidentiality is required for the relevant proceedings, evidence or matter.

(4) A panel may issue a direction under subsection (2) for the purposes of a special hearing under section 147.

### **General procedure**

**146. (1)** At a hearing of an Inquiry, the panel—

(a) shall not conduct the hearing in an unduly formal manner;

(b) is not bound by the rules of evidence, and may inform itself—

(i) in any way it thinks fit; and

(ii) without notice to any person who has made a submission to the Inquiry;

(c) may take evidence on oath, or affirmation, administered by a member of the panel;

(d) may prohibit or regulate cross-examination; and

(e) subject to this Subdivision, may otherwise determine its own procedures.

(2) Unless otherwise required by the panel, a person may make a submission to an Inquiry orally or in writing or partly orally and partly in writing.

(3) The panel may adjourn an Inquiry from time to time and from place to place (whether within or outside the Territory).

### **Special hearings—consultation with interested persons**

**147. (1)** A panel may hold a special hearing of the Inquiry in order to consult with—

- (a) the proponent;
- (b) any other person that the panel believes on reasonable grounds to have an interest directly affected by the proposal; and
- (c) any other person the panel considers appropriate;

for the purposes of—

- (d) clarifying the proposal; and
- (e) discussing ways in which the proposal could be modified in order to reduce or eliminate any potential environmental impact.

(2) The panel shall give each person referred to in subsection (1) reasonable notice in writing of the special hearing.

(3) The panel shall conduct a special hearing in an informal manner.

(4) The panel shall include in the report of an Inquiry a report stating—

- (a) the outcome of the special hearing; and
- (b) any influence the special hearing has had on the panel's recommendations in relation to the proposal.

### **Assessments for the purpose of Inquiries**

**148. (1)** For the purposes of an Inquiry, the relevant Minister may, at the written request of the panel, or on his or her own motion, direct that an Assessment be made of the environmental impact of any aspect of the proposal which is the subject of the relevant defined decision.

(2) An Assessment under subsection (1) consists of a public environment report or an environmental impact statement, but does not include a report of the Environment Minister under section 131 evaluating the public environment report or environmental impact statement.

(3) Sections 127, 128, 129 and 130 apply to an Assessment under subsection (1) as if the references to the Environment Minister in those sections were references to the relevant Minister.

(4) Section 131 does not apply in relation to an Assessment under subsection (1).

(5) For the purposes of subsection 132 (1), the relevant Minister shall cause a copy of an Assessment under subsection (1), together with any notice, report, comment or information referred to in paragraph 132 (1) (b) or (c), be laid before the Legislative Assembly within 6 sitting days of—

- (a) receiving the Assessment under section 127;
- (b) where he or she issues a notice under section 129, but does not issue a notice under section 130—receiving the relevant information under subsection 129 (2); or
- (c) where he or she issues a notice under section 130—receiving the Assessment or report under subsection 130 (3).

### **Witnesses—summons to appear**

**149. (1)** The presiding member of a panel may, by writing, summon a person to attend a hearing of the Inquiry at a specified time and place to give evidence and to produce such books and documents as are—

- (a) relevant to any matter at issue in the Inquiry; and
- (b) specified in the summons.

**(2)** A person served with a summons under subsection (1) shall not, without reasonable excuse, fail to comply with the summons.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(3)** The Territory shall pay a witness summoned to appear at an Inquiry such allowances as are prescribed.

### **Victimisation of witnesses**

**150. (1)** A person shall not—

- (a) use violence to or inflict injury upon;
- (b) cause or procure violence, damage, loss or disadvantage to; or
- (c) cause or procure the punishment of;

a person on account of the person's giving, or proposing to give, evidence to an Inquiry.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(2)** An employer shall not—

- (a) dismiss an employee from his or her employment, or prejudice an employee in his or her employment, on account of the employee's giving, or proposing to give, evidence to an Inquiry; or
- (b) threaten so to dismiss, or so to prejudice, an employee on account of the employee's proposing to give evidence to an Inquiry.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) For the purposes of paragraph (2) (a), in proceedings for an offence against subsection (2), if it is established that an employer dismissed an employee from his or her employment, or prejudiced an employee in his or her employment, after the employee gave, or proposed to give, evidence to an Inquiry, it is to be presumed that that dismissal or prejudice was by reason of the employee's giving, or proposing to give, evidence at the Inquiry, but that presumption is rebuttable.

(4) For the purposes of paragraph (2) (b), in proceedings for an offence against subsection (2), if it is established that an employer threatened to dismiss an employee from his or her employment, or to prejudice an employee in his or her employment, after the employee proposed to give evidence to an Inquiry, it is to be presumed that that threat was by reason of the employee's proposal, but that presumption is rebuttable.

### **Inspection of books and documents**

**151. (1)** An authorised person may inspect any book or document given in evidence to the Inquiry, and may make copies of, or copy extracts from, such a book or document.

(2) A book or document given in evidence to an Inquiry may be retained by the panel for such reasonable period as the panel thinks fit.

(3) A panel shall allow the owner of a book or document retained by the panel reasonable access to the book or document.

### **Power of entry**

**152. (1)** For the purposes of an Inquiry, an authorised person may enter any place—

- (a) with the consent of the occupier; or
- (b) pursuant to a warrant issued under section 153.

(2) Before seeking the consent of the occupier of a place for the purpose of subsection (1), an authorised person shall—

- (a) if the authorised person is a panel member—produce written evidence of his or her appointment;
- (b) if the authorised person is the assistant of a panel member—produce written evidence of his or her authority; and
- (c) inform the occupier that he or she may refuse to give consent.

**(3)** Where an authorised person obtains the consent of the occupier to enter a place under subsection (1), the authorised person shall ask the occupier to sign a written acknowledgment—

- (a) that the occupier has been informed that he or she may refuse to so consent;
- (b) that the occupier has consented; and
- (c) of the day on which, and the time at which the occupier consented.

**(4)** Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented to the entry of premises by an authorised person under subsection (1) and an acknowledgment in accordance with subsection (3) signed by the occupier is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

### **Search warrants**

**153. (1)** Where a panel member believes on reasonable grounds that it is necessary, for the purposes of the Inquiry, for an authorised person to enter and inspect any place and to search for and inspect any thing or any kind of thing, within the next following 28 days the member may—

- (a) lay before a magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the place for such a thing or things, and to inspect it or them.

**(2)** On application under subsection (1), the magistrate may issue a warrant authorising the authorised person named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place;
- (b) to search for any specified thing or any thing of a specified kind; and
- (c) to inspect any such thing.

**(3)** A magistrate shall not issue a warrant unless—

- (a) the applicant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.



- (4) A warrant shall—
- (a) specify the Inquiry in relation to which the entry, search and inspection are authorised;
  - (b) state the purpose for which it is issued;
  - (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night;
  - (d) include a description of the things, or kinds of things, in relation to which any power under section 154 may be exercised; and
  - (e) specify a date not later than 28 days after the date of issue of the warrant on which the warrant ceases to have effect.

#### **Powers of search and inspection**

**154. (1)** Subject to the terms of any warrant issued under section 153, where an authorised person enters a place in accordance with section 152, he or she may, for the purposes of the Inquiry—

- (a) inspect the place;
- (b) search for and inspect any thing; or
- (c) require the occupier to give the authorised person such assistance as is reasonable to enable the authorised person to exercise his or her powers under this section.

(2) A person shall not, without reasonable excuse, contravene a requirement made of the person under paragraph (1) (c).

Penalty for contravention of subsection (2): \$5,000 or imprisonment for 6 months, or both.

#### **Obstructing or resisting an authorised person**

**155.** A person shall not wilfully obstruct or resist an authorised person in the exercise or attempted exercise of his or her powers under this Subdivision.

Penalty: \$5,000 or imprisonment for 6 months, or both.

#### **Contempt**

**156.** A person shall not, without reasonable excuse—

- (a) contravene a direction lawfully given by a panel member;
- (b) disturb a panel member in the exercise of the member's powers or the performance of his or her functions;

- (c) interrupt a hearing of an Inquiry;
- (d) use insulting language, or act in an insulting manner, towards a panel member;
- (e) create a disturbance, or participate in the creation or continuation of a disturbance, in or near a place where a hearing of an Inquiry is taking place; or
- (f) do any other act or thing which would, if the panel were a court of record, constitute a contempt of that court.

Penalty: \$5,000 or imprisonment for 6 months, or both.

### **Protection of panel members and witnesses**

**157. (1)** A panel member has, in the exercise of the member's powers or the performance of his or her functions, the same protection and immunity as a Justice of the Supreme Court.

**(2)** Subject to this Division, a person giving evidence to an Inquiry has the same protection, and is subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the Supreme Court.

### *Division 5—Administrative review*

#### **Review of decisions**

**158.** A proponent in relation to an assessment may apply to the Appeals Board for review of—

- (a) a decision of the Environment Minister under section 117 fixing the maximum price at which the proponent may sell a copy of a preliminary assessment; or
- (b) a decision of the Environment Minister under section 125 fixing the maximum price at which the proponent may sell a copy of a draft environmental impact statement.

## **PART V—LAND ADMINISTRATION**

### *Division 1—Preliminary*

#### **Interpretation**

**159. (1)** In this Part, unless the contrary intention appears—

“building and development provision”, in relation to a lease, means a provision of the lease that requires the lessee to carry out specified

works on the land comprised in the lease or on any unleased Territory Land;

“lease” means—

- (a) a lease granted under this Act;
- (b) a lease granted under a repealed Act and continued in force by the *Land (Planning and Environment) (Consequential Provisions) Act 1991*; or
- (c) a lease granted under the *Unit Titles Act 1970*;

but does not include a sublease;

“lessee” means the person who is the proprietor of a lease, whether or not he or she is the registered proprietor of the lease, and whether or not the lease was granted to him or her or the lease passed to him or her by assignment, transfer, devolution or operation of law;

“public carpark” means an area that is an off-street parking area within the meaning of the *Motor Traffic Act 1936* and that is available for use by the public without the payment of money;

“public land” means land identified as public land in the Plan;

“public road” has the same meaning as in the *Motor Traffic Act 1936*;

“registered lease” means a lease registered in the Register kept under the *Real Property Act 1925*;

“registered proprietor”, in relation to a lease, means the person who is registered under the *Real Property Act 1925* as proprietor of the lease;

“repealed Act” means an Act repealed by the *Land (Planning and Environment) (Consequential Provisions) Act 1991*;

“residential lease” means a lease of Territory Land granted for residential purposes only;

“sublease” means a sublease of a parcel of land, or part of a parcel of land, subject to a lease, or of a building, or a part of a building, on a parcel of land subject to a lease;

“sublessee” means the person who is the proprietor of a sublease, whether the sublease was granted to him or her or the sublease has passed to him or her by assignment, transfer, devolution or operation of law;

“Territory Land” has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth.

(2) A reference in this Part to a provision of a lease shall be read as including a reference to a provision to which the lease is subject.

(3) A reference in this Part to the variation of a lease shall be read as including a reference to the surrender of a lease and the grant of a new lease to the same lessee over land—

- (a) that is the whole or part of the land comprised in the surrendered lease; and
- (b) that is not defined land within the meaning of Subdivision D of Division 3 of Part II;

subject to provisions that differ from those of the surrendered lease.

(4) A reference in this Part to the market value of a lease is a reference to the 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.

### **Application**

**160. (1)** This Part applies to all grants of estates in Territory Land made by the Executive on behalf of the Commonwealth.

(2) This Part does not apply to a transfer by the Territory of a registered lease of which the Territory is the registered proprietor.

### ***Division 2—Leases***

#### **Granting of leases**

**161. (1)** The Executive may, on behalf of the Commonwealth, grant a lease of Territory Land by—

- (a) auctioning the lease;
- (b) calling tenders for the grant of the lease;
- (c) conducting a ballot for the right to the grant of the lease; or
- (d) a direct grant to an applicant for a lease.

(2) A lease granted under this section may include provisions—

- (a) requiring the lessee to develop the land comprised in the lease, or any unleased Territory Land, in a specified way; or
- (b) requiring the lessee to give security for the performance of any of his or her obligations under the lease.

(3) A lease granted under paragraph (1) (d) shall be granted subject to such provisions as are agreed between the Executive and the applicant for the lease.

(4) The Executive shall not grant a lease of Territory Land under paragraph (1) (d) otherwise than in accordance with criteria specified pursuant to subsection (5).

(5) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the granting of leases under paragraph (1) (d); or
- (b) amend or revoke criteria so specified.

(6) An instrument under subsection (5) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Fees for granting leases**

**162. (1)** A lease under section 161 shall only be granted on payment of the determined fee.

(2) Different fees may be determined in respect of different classes of leases granted under section 161.

### **Leases to community organisations**

**163. (1)** In this section—

“community organisation” means a body corporate that—

- (a) has as its principal purpose the provision of a service, or a form of assistance, to persons living or working in the Territory;
- (b) is not carried on for the pecuniary profit or gain of its members; and
- (c) does not hold a Club Licence under the *Liquor Act 1975*.

(2) The Executive may, on behalf of the Commonwealth, grant a lease of Territory Land to a community organisation without charge or for a charge that is less than the market value of the lease.

(3) The Executive shall not grant a lease under this section otherwise than in accordance with criteria for the granting of leases to community organisations specified pursuant to subsection (4).

(4) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the granting of leases to community organisations; or
- (b) amend or revoke criteria so specified.

(5) An instrument under subsection (4) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(8) A community organisation shall not transfer a lease granted under this section and a purported transfer of such a lease shall be of no effect.

(9) Nothing in this section shall be taken to derogate from the power of the Executive to grant a lease of Territory Land to a community organisation otherwise than under this section.

### **Special leases**

**164. (1)** The Executive may, on behalf of the Commonwealth, 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 and in the public interest to do so in order to facilitate—

- (a) the economic development of the Territory; or
- (b) the development of business in the Territory.

(2) The Executive shall not grant a lease of Territory Land under this section otherwise than in accordance with criteria for the granting of special leases specified pursuant to subsection (3).

(3) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the granting of special leases; or
- (b) amend or revoke criteria so specified.

(4) An instrument under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(7) The lessee under a lease to which this section applies shall not, for a period of 5 years after the day on which the lease is granted—

- (a) assign or transfer the lease;

- (b) sublet the land comprised in the lease or any part of it; or
- (c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the Executive and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection shall be of no effect.

**(8)** The Executive shall not consent to the lessee under a lease to which this section applies—

- (a) assigning or transferring the lease;
- (b) subletting the land comprised in the lease or any part of it; or
- (c) parting with possession of the land comprised in the lease or any part of it;

unless it is satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given, as the case may be, is a person who satisfies the criteria of eligibility specified pursuant to subsection (2) in respect of the class of leases in which the lease is included.

### **Authority to consider proposed leases**

**165. (1)** In this section—

“Designated Area” has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“lease” includes a licence to occupy or use an area of unleased Territory Land for a period exceeding 3 months.

**(2)** Where the Executive proposes to grant a lease of Territory Land on behalf of the Commonwealth, not being land in a Designated Area, it shall give the Authority notice in writing of its intention to do so and in the notice specify—

- (a) the boundaries of the land over which it is proposed that the lease should be granted;
- (b) the term of the lease;
- (c) the purposes for which the lease is to be granted; and

- (d) the provisions to be included in the lease and any agreement collateral to the lease.

**(3)** On receiving a notice under subsection (2), the Authority shall, within the prescribed period, advise the Executive by instrument whether it considers that the lease specified in the notice—

- (a) may appropriately be granted as proposed in the notice under subsection (2);
- (b) may appropriately be granted subject to compliance with conditions specified in the instrument; or
- (c) could not appropriately be granted.

**(4)** In determining the advice it is to give to the Executive under subsection (3) in relation to a proposed lease, the Authority shall consider each of the following matters, and only the following matters:

- (a) whether the lease would be consistent with the planning principles and policies set out in the Plan;
- (b) whether the lease would be in accordance with any directions of the Executive in force under section 37;
- (c) any matters prescribed by the Plan for the purpose of this subsection;
- (d) the appropriateness of the timing of the grant of the lease.

**(5)** The conditions that the Authority may specify pursuant to paragraph (3) (b) in relation to a proposed lease are conditions of the following kinds only:

- (a) a condition specifying the land over which the lease may be granted;
- (b) a condition specifying the term, or the maximum term, for which the lease may be granted;
- (c) a condition specifying the purposes for which the land to be leased may be used under the lease;
- (d) a condition specifying provisions to be included in the lease or an agreement collateral to the lease.

**(6)** Where the Authority gives the Executive advice of the kind referred to in paragraph (3) (b) or (c), it shall—

- (a) in the case of advice of the kind referred to in paragraph (3) (b)—specify in the instrument under subsection (3) its reasons for considering that the conditions specified in the instrument should be imposed; or



(b) in the case of advice of the kind referred to in paragraph (3) (c)—specify in the instrument under subsection (3) its reasons for considering that the proposed lease could not appropriately be granted.

(7) Where the Authority has advised the Executive pursuant to subsection (3) that a proposed lease may appropriately be granted, the Executive may—

(a) if the Authority has stated that the lease may appropriately be granted as proposed in the notice under subsection (2)—grant the lease as proposed in that notice; or

(b) if the Authority has stated that the lease may appropriately be granted subject to conditions specified in the instrument under subsection (3)—grant the lease subject to compliance with those conditions.

(8) Where the Executive has given the Authority a notice under subsection (2) in relation to a proposed lease and the Authority has not, within the time prescribed for the purposes of subsection (3), advised the Executive pursuant to that subsection whether it considers that the proposed lease may appropriately be granted, the Executive may grant the lease as proposed in the notice under subsection (2).

(9) Where the Authority has advised the Executive pursuant to subsection (3) that a lease specified in a notice under subsection (2) may appropriately be granted subject to compliance with specified conditions, the Executive may grant the lease without complying with 1 or more of those conditions.

(10) The Executive may grant a lease specified in a notice under subsection (2) notwithstanding that the Authority has, pursuant to subsection (3), advised the Executive that it considers that the lease could not appropriately be granted.

(12) Notwithstanding anything contained in this Act or any other Act, the power to grant a lease in accordance with subsection (9) or (10) may only be exercised by—

(a) the Executive; or

(b) a Minister acting on behalf of the Executive.

### **Inquiries and Assessments in relation to the granting of leases**

**166. (1)** Where it is proposed that a lease of Territory Land be granted, the Executive may—

- (a) establish a panel to conduct an Inquiry into whether the proposed lease should be granted; or
  - (b) direct that an Assessment be made into the possible environmental impact of a decision to grant the lease.
- (2) Where the Executive establishes a panel to conduct an Inquiry, or directs an Assessment to be made, pursuant to subsection (1), the Executive—
- (a) shall not grant the proposed lease until—
    - (i) in a case where a panel is established to conduct an Inquiry—the panel has reported to the Executive and the Executive has considered the report; or
    - (ii) in a case where a direction has been given for an Assessment to be made—the Assessment has been completed and the Executive has considered the environment report or the environmental impact statement forming part of the Assessment; and
  - (b) shall review the provisions of the proposed lease taking into consideration the environment report, environmental impact statement or report of the panel established to conduct the Inquiry, as the case requires.

### **Eligibility for certain classes of leases**

**167. (1)** The Executive may, by instrument—

- (a) declare a specified class of leases to be leases to which this section applies;
- (b) specify, in respect of a class of leases declared under paragraph (a) to be leases to which this section applies, criteria for determining whether a person is eligible to hold the land comprised in a lease included in that class; or
- (c) amend or revoke a declaration under paragraph (a) or criteria specified under paragraph (b).

(2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(3) The Executive shall not grant a lease to which this section applies to a person who does not satisfy the criteria specified pursuant to paragraph (1) (b) in respect of the class of leases in which the lease is included.

(4) The validity of a lease to which this section applies is not to be taken to be affected by a failure to comply with subsection (3).

- (5) The lessee under a lease to which this section applies shall not—
- (a) assign or transfer the lease;
  - (b) sublet the land comprised in the lease or any part of it; or
  - (c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the Executive and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection shall be of no effect.

(6) The Executive shall not consent to the lessee under a lease to which this section applies—

- (a) assigning or transferring the lease;
- (b) subletting the land comprised in the lease or any part of it; or
- (c) parting with possession of the land comprised in the lease or any part of it;

unless it is satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given, as the case may be, is a person who satisfies the criteria of eligibility specified pursuant to paragraph (1) (b) in respect of the class of leases in which the lease is included.

### **Executive not bound to grant lease**

**168.** The Executive shall not be bound to grant a lease of Territory Land to any applicant, notwithstanding that applications for a lease have been invited and, where applications for a lease have been invited subject to conditions, the Executive may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

### **Payment for leases**

**169. (1)** Subject to subsection (2), the Executive shall not grant a lease of Territory Land otherwise than for payment of an amount that is not less than the market value of the lease.

- (2) Subsection (1) does not apply in respect of—
- (a) a lease granted for a rent that is the full market rental value of the lease; or
  - (b) a lease granted under paragraph 161 (1) (d) or section 163, 164, 171 or 172.

**Failure to accept and execute lease**

**170. (1)** Subject to subsection (2), where a person who is entitled to the grant of a lease of Territory Land pursuant to this Part fails to—

- (a) accept and execute the lease; or
- (b) pay any amount that he or she is required to pay before being granted the lease;

within the prescribed period, the Executive may, by instrument served on the person, terminate his or her right to the grant of the lease.

**(2)** An instrument under subsection (1) shall—

- (a) specify the ground on which it is given; and
- (b) state that it takes effect on the day 28 days after the day on which it is served.

**(3)** An instrument under subsection (1) may be served on a person by—

- (a) delivering it to the person personally;
- (b) sending it to the person by post; or
- (c) where the residential address of the person is not known to the Executive—publishing a copy of the instrument in a daily newspaper.

**(4)** An instrument under subsection (1) shall take effect on the day 28 days after the day on which it is served.

**(5)** A person whose right to the grant of a lease has been terminated under this section shall not have any claim for compensation in respect of the termination of the right or for the recovery of any monies paid to the Executive in respect of the grant of the lease.

**Grant of further lease for residential purposes**

**171.** Where—

- (a) the term of a residential lease of Territory Land is to expire within a period of 30 years;
- (b) the lessee of the land applies to the Executive for the grant of a further residential lease of that land;
- (c) neither the Territory nor the Commonwealth requires the land for a public purpose; and
- (d) the lessee pays such fee fixed by the Executive for granting the further lease as does not exceed the cost of granting the lease;

the Executive shall, on behalf of the Commonwealth, grant the lessee a further residential lease of that land to commence on the day of the grant.

**Grant of further lease for purposes other than residential or rural purposes**

**172.** Where—

- (a) the term of a lease of Territory Land that has not been granted for residential or rural purposes is to expire within a period of 30 years;
- (b) the lessee applies to the Executive for the grant of a further lease of the land;
- (c) neither the Territory nor the Commonwealth requires the land for a public purpose;
- (d) the Executive does not propose to allow the land to be used for a purpose other than that for which it is presently leased;
- (e) any prescribed requirements for the grant of the further lease applied for are satisfied;
- (f) all rent due under the existing lease is paid; and
- (g) the lessee pays the determined fee;

the Executive shall grant the lessee a further lease of the land to commence on the day of the grant.

**Lessee's rights in respect of improvements**

**173. (1)** In this section—

“improvement” means a building or a structure but does not include a building or structure, or a part of a building or structure—

- (a) that has been constructed, erected or installed without an approval or authorisation required under a law of the Territory;  
or
- (b) that has been constructed, erected or installed at the cost of the Territory or the Commonwealth unless the Territory or the Commonwealth has received, or is entitled to receive, payment for the building, structure or part;

“lessee”, in relation to a lease which has been terminated or surrendered or in relation to a lease the term of which has expired, means the person who was the lessee under the lease at the time of the termination or

surrender or at the time of the expiration of the term, as the case may be.

(2) Where, upon the expiration of the term of a lease of Territory Land upon which there are improvements, the lessee is granted a further lease of that land or any part of it, he or she shall not be liable to make any payment to the Executive for the improvements on the land or part of the land, as the case may be.

(3) Subject to subsections (4) and (8), where, upon the expiration of the term of a lease of Territory Land upon which there are improvements, the lessee is not granted a further lease of the land, or is granted a lease of part only of the land, the Executive shall be liable to pay the lessee—

- (a) where no further lease of the land is granted to the lessee—the amount determined by the Minister to be the value of the improvements on the land; or
- (b) where a further lease of part only of the land is granted to the lessee—the amount determined by the Minister to be the value of the improvements on the part of the land not so leased.

(4) If, prior to the expiration of the term of a lease of Territory Land, the Executive declares the land comprised in the lease, or any part of it, to be available for lease and the lessee does not, before the expiration of 6 months after the expiration of the term, elect to take a further lease of the land or part, there shall be deducted from the amount payable to the lessee under this section the amount of such expenditure as the Executive reasonably incurs in connection with the grant to any other person of a lease of that land or part.

(5) Subject to subsections (6), (7) and (8), where a lease is terminated or surrendered the provisions of this section relating to the payment to the lessee of the value of the improvements on the land comprised in the lease upon the expiration of the term shall (so far as applicable) apply as if the term of the lease had expired on the day of the termination or surrender.

(6) Subsection (5) applies in respect of a lease only if the lessee has fully complied with the provisions (if any) of the lease relating to the erection of a building on the land comprised in the lease.

(7) There shall be deducted from any sum payable pursuant to subsection (5) in respect of the value of improvements on the land comprised in a lease which has been terminated or surrendered the amount of such expenditure as the Minister determines has been incurred by the Territory in connection with

the termination or surrender of the lease and the grant (if any) of a further lease of the land or any part of it.

(8) Subsections (3) and (5) apply in respect of a lease subject to any provisions of the lease that preclude or limit the right of the lessee to payment in respect of improvements on the land comprised in the lease.

### **Determination of value of improvements**

174. (1) In this section—

“lessee” has the same meaning as in section 173;

“market value”, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale on the open market on the day immediately before the prescribed day on such reasonable terms and conditions as a *bona fide* seller might require;

“prescribed day”, in relation to land a lease of which has expired, or has been terminated or surrendered, means the day of expiry, determination or surrender, as the case may be.

(2) Where compensation is payable under section 173 in respect of improvements, the Minister shall, as soon as practicable after the day that is the prescribed day in relation to the land on which the improvements are situated, by instrument determine, in accordance with this section, the market value of the improvements on the land as at the prescribed day.

(3) Where compensation is payable under subsection 173 (3), the Minister shall, in valuing the improvements, assume that the lease of the land had been renewed subject to the same provisions, and for the same term, as the lease which has expired.

(4) Where compensation is payable under subsection 173 (5), the Minister shall, in valuing the improvements, assume that the lease of the land had not been terminated or surrendered.

### **Land to be used for the purpose for which it is leased**

175. Territory Land in respect of which a lease has been granted, whether before or after the commencement of this Part, shall not be used for any purpose other than a purpose authorised by the lease.

**Variation of rent**

**176. (1)** Where the rent payable under a lease of Territory Land is varied in accordance with the provisions of the lease, the Minister shall give the lessee notice in writing of the variation by post.

**(2)** A variation of rent referred to in a notice under subsection (1) shall come into operation on—

- (a) the day 28 days after the day on which the notice is given; or
- (b) where the lease under which the variation is made provides that the variation shall come into operation on a later day—that later day.

**Review of variations of rent**

**177. (1)** Where—

- (a) the rent payable under a lease of Territory Land is varied in accordance with the provisions of the lease; and
- (b) the lease does not provide for the submission to arbitration of differences between the parties to the lease regarding variation of the rent;

the lessee may, within 28 days after receiving the notice under subsection 176 (1) relating to the variation, serve on the Minister a request in writing that he or she review the variation.

**(2)** The making of a request under subsection (1) does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.

**(3)** Where a request is made under subsection (1), the Minister shall review the variation to which the request relates and may confirm the variation or set it aside and substitute such other variation as the Minister considers appropriate.

**Refund of amount paid for grant of lease**

**178. (1)** Subject to subsection (2), the Minister may authorise the payment to—

- (a) a person who has surrendered a lease of Territory Land; or
- (b) a person who held a lease of Territory Land that has been terminated under this Act;



of an amount that is equal to the amount paid by the person for the grant of the lease less any charge determined for the purposes of this subsection in respect of the refund of the amount paid for the grant of a lease of that kind.

(2) The Minister shall not authorise the payment of an amount under this section otherwise than in accordance with criteria for the authorisation of payments specified pursuant to subsection (3).

(3) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the authorisation of payments under this section; or
- (b) amend or revoke criteria so specified.

(4) An instrument under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Certificates of compliance**

**179. (1)** Subject to subsection (2), where a building and development provision of a lease of Territory Land has been fully complied with, the Minister shall, on application by the lessee and payment of the determined fee, issue a certificate that the provision has been so complied with.

(2) The Minister shall not issue a certificate under subsection (1) in respect of a building and development provision to which a lease under the *Unit Titles Act 1970* is subject unless the requirements of that subsection are satisfied and the Minister is satisfied—

- (a) in the case of every other lease in respect of the same subdivision that is subject to a building and development provision, that the provision has been complied with; or
- (b) that the occupier of the unit that is held under the lease will not, as occupier, be substantially inconvenienced by works being carried out, or that are to be carried out, in compliance with a building and development provision to which the lease of the common property or another unit contained in the same subdivision under the *Unit Titles Act 1970* is subject.

### **Transfer of land subject to building and development provision**

**180. (1)** Where a lease of Territory Land contains a building and development provision, the lease, or an interest in the lease, is not capable of being assigned or transferred, either at law or in equity unless—

- (a) the lessee has died;

- (b) the transfer or assignment is made pursuant to an order of the Family Court of Australia or another court having jurisdiction under the *Family Law Act 1975* of the Commonwealth;
  - (c) the transfer or assignment occurs by operation of, or pursuant to, bankruptcy or insolvency; or
  - (d) the lessee has obtained—
    - (i) the consent of the Minister under section 28 of the *City Area Leases Act 1936* as in force at any time before 19 December 1973;
    - (ii) a certificate under subsection 179 (1); or
    - (iii) the consent of the Minister under subsection (2).
- (2) Where—
- (a) the lessee under a lease of Territory Land that contains a building and development provision; or
  - (b) a proposed assignee or transferee of such a lease, or of an interest in such a lease;

applies to the Minister for his or her consent to a legal or equitable assignment or transfer of the lease, or of an interest in the lease, to a specified assignee or transferee and pays the determined fee, the Minister shall, by instrument, consent to that assignment or transfer if—

- (c) he or she is satisfied that the proposed assignee or transferee intends to comply with the building and development provision; and
- (d) any security required by the Minister for compliance by the assignee or transferee with that provision has been given.

### **Mortgage of leasehold subject to building and development provision**

**181.** Where a lease contains a building and development provision, the lease, or an interest in the lease, shall not be capable of being mortgaged unless—

- (a) the lessee has obtained a certificate under subsection 179 (1); or
- (b) the mortgage is required by the lessee—
  - (i) to enable the lessee to repay money borrowed by him or her for the purpose of acquiring the lease or interest;

- (ii) to secure money borrowed by the lessee for the purpose of acquiring the lease or interest; or
- (iii) to enable the lessee to comply with a building and development provision of the lease.

**Land leased to be held as undivided parcel**

**182. (1)** Subject to section 183, the land comprised in a lease of Territory Land shall at all times be held and occupied by or under the lessee as 1 undivided parcel.

**(2)** Subject to this Part, the land comprised in a lease of Territory Land may be sublet and the lease and any interest in it may be assigned, transferred or mortgaged.

**Power of lessee to sublet portion of building or land in certain cases**

**183. (1)** Any portion of a building erected on land comprised in a lease of Territory Land may, subject to the lease and any sublease of the land, be sublet separately from the remainder of that building.

**(2)** Where a portion of a building is sublet separately from the remainder of the building, any portion of the parcel of land on which the building is erected may be sublet with the portion of the building separately from the remainder of the parcel of land, provided that the portion of the parcel of land so sublet adjoins that portion of the parcel of land on which the building is erected.

*Division 3—Variation of leases*

**Payments in respect of variation of leases**

**184.** The Executive shall not execute a variation of a lease of Territory Land unless—

- (a) all rent and additional rent (if any) payable under the lease up to the day of variation has been paid; and
- (b) where the variation of the lease would increase the market value of the lease, the lessee has paid the Executive an amount determined by the Executive as prescribed in respect of the increase in the value of the lease that would result from the variation.

**Advice of rent payable on variation of a lease**

**185.** Where the Executive agrees to a variation of a lease of Territory Land, being a lease under which rent or additional rent is payable, it shall—

- (a) calculate the amount that would be payable under the lease for rent and additional rent up to the day on which it expects the variation to be executed; and
- (b) give the lessee notice in writing of—
  - (i) the amount calculated for rent and additional rent under paragraph (a);
  - (ii) the day up to which the amount payable for rent and additional rent has been calculated; and
  - (iii) the day by which the Executive requires payment of the amount specified pursuant to subparagraph (i) to enable the variation of the lease to be executed on the day specified pursuant to subparagraph (ii).

#### **Variation of lease to pay out rent**

**186. (1)** A lease shall not be varied to reduce the rent payable to a nominal rent unless—

- (a) the lease is included in a prescribed class of leases;
- (b) all amounts payable to the Territory up to the day of variation of the lease for rates and land tax levied in respect of the land comprised in the lease have been paid; and
- (c) the provisions of the lease requiring the lessee to develop the land comprised in the lease have been complied with up to the day of the variation.

**(2)** Where a lease of Territory Land is varied to reduce the rent payable to a nominal rent, the lease as varied shall provide that the lessee is to pay a rent of 5 cents per annum if and when that rent is demanded.

**(3)** The requirements of this section are in addition to, and not in substitution for, the requirements of the other provisions of this Act relating to the variation of leases.

#### ***Division 4—Recovery of land***

#### **Termination of leases and licences**

**188. (1)** Subject to subsection (5), where a lessee of Territory Land contravenes the provisions of this Part or the provisions of his or her lease, the Executive may, by notice in writing served on the lessee by post, terminate the lease.

(2) A notice under subsection (1) takes effect on the day 14 days after the day on which it is served.

(3) Subject to subsection (5), where a person who occupies Territory Land under a licence from the Commonwealth or the Territory contravenes the provisions of this Part or the provisions of his or her licence, the Executive may, by notice in writing served on the licensee by post, terminate the licence.

(4) A notice under subsection (3) takes effect on the day 7 days after the day on which it is served.

(5) The Executive shall not terminate a lease or a licence under this section unless it has—

- (a) by notice in writing served on the lessee or licensee by post—
  - (i) informed the lessee or licensee that it is considering terminating the lease or licence;
  - (ii) specified the grounds on which it is considering taking that action; and
  - (iii) invited the lessee or licensee to notify the Executive in writing within 21 days after the date of the notice of any reasons why the lessee or licensee considers that the lease or licence should not be terminated; and
- (b) taken into account any reasons for not terminating the lease or licence notified to the Executive by the lessee or licensee in accordance with the notice served on him or her under paragraph (a).

### **Recovery of land on expiry, surrender or termination of lease or licence**

**189.** If, after—

- (a) the term of a lease of Territory Land has expired, or such a lease has been surrendered or terminated; or
- (b) the term of a licence granted by the Commonwealth or the Territory to occupy Territory Land has expired, or such a licence has been surrendered or terminated;

the lessee or licensee, or any other person apparently in occupation or possession of the land fails, on demand by the Executive, to deliver up possession of the land, the Magistrates Court may, on the application of the Executive, issue a warrant authorising a police officer, within a period of not more than 30 days after the date of the warrant, to enter the land, with such

assistance and by such force as is necessary and reasonable, and deliver possession of the land to the Executive.

### **Certificate of Minister to be evidence**

**190.** A certificate signed by the Minister, or by a person authorised by the Minister to give such a certificate, stating that a lease has been terminated shall be evidence of the termination of the lease.

### ***Division 5—Public land***

#### ***Subdivision A—Preliminary***

### **Interpretation**

**191.** In this Division—

“Plan of Management” means a plan of management prepared under Subdivision D, as varied and in effect from time to time;

“variation”, in relation to a Plan of Management, includes the revocation of the Plan and its substitution with a new Plan.

#### ***Subdivision B—Public land***

### **Recommendations to the Authority**

**192.** The Conservator may, in writing, recommend to the Authority that the Plan be varied to provide for—

- (a) the identification of an area of land as public land and its reservation for a purpose referred to in section 193; or
- (b) in relation to an area already identified in the Plan as public land—
  - (i) the variation of its boundaries;
  - (ii) the variation of the purpose for which it is reserved; or
  - (iii) the cessation of its designation as public land.

#### ***Subdivision C—Management of public land***

### **Reserved areas**

**193.** The purposes for which areas of public land are to be reserved pursuant to paragraph 7 (2) (b) and for which areas of public land may be reserved under paragraph 192 (a) are for—

- (a) a wilderness area;
- (b) a national park;
- (c) a nature reserve;

- (d) a special purpose reserve;
- (e) an urban open space;
- (f) a cemetery or burial ground;
- (g) a lake; or
- (h) a sport and recreation reserve.

### **Management**

**194.** An area of public land shall be managed in accordance with—

- (a) the management objectives applying to the area; and
- (b) the Plan of Management (if any) for the area.

### **Management objectives**

**195. (1)** For the purposes of section 194, the management objectives for an area of public land reserved for a particular purpose are—

- (a) objectives specified in Schedule 1; and
- (b) objectives specified by the Conservator pursuant to subsection (2);

in relation to areas of land reserved for that purpose.

**(2)** The Conservator may, by instrument—

- (a) specify management objectives for an area of public land reserved for a purpose specified in Schedule 1; or
- (b) amend or revoke management objectives specified under paragraph (a).

**(3)** An instrument under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**(4)** Where there is an inconsistency between the application of 2 management objectives specified in Schedule 1 in relation to an area of public land, the objective last-mentioned in that Schedule is to be read subject to the other objective.

**(5)** Where there is an inconsistency between the application of a management objective specified in Schedule 1 and a management objective specified by the Conservator pursuant to subsection (2) in relation to an area of public land, the objective specified by the Conservator is to be read subject to the other objective.

(6) In Schedule 1—

“natural environment” means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

### ***Subdivision D—Plans of Management***

#### **Content**

**196.** A Plan of Management includes—

- (a) a description of the area of public land to which it applies; and
- (b) the manner in which the relevant management objectives referred to in subsection 195 (1) are to be implemented or promoted in that area.

#### **Preparation**

**197. (1)** The Conservator shall prepare a draft Plan of Management for an area of public land as soon as practicable after the area is identified as such in the Plan.

**(2)** In preparing a draft Plan of Management, the Conservator shall consider any recommendation submitted by the Authority.

#### **Variations**

**198. (1)** The Conservator may prepare a draft variation of a Plan of Management in the same manner as a draft Plan of Management.

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

#### **Environmental Assessments and Inquiries**

**199. (1)** At the written request of the Conservator, or on his or her own motion, at any time before a draft Plan of Management is approved under paragraph 204 (a) the Minister may—

- (a) direct that an Assessment be made; or
- (b) establish a panel to conduct an Inquiry;

about any aspect of the draft Plan.

**(2)** In preparing or revising a draft Plan of Management, the Conservator shall consider any relevant Assessment or the report of any relevant Inquiry.



### **Public consultation**

**200. (1)** This section applies to a draft Plan of Management for an area of public land where—

- (a) no corresponding preliminary draft Plan of Management for that area has been notified under section 19; or
- (b) where such a preliminary draft has been so notified—the first-mentioned draft Plan of Management differs significantly from that preliminary draft.

**(2)** The Conservator shall make copies of a draft Plan of Management to which this section applies available to an appropriate committee of the Legislative Assembly.

**(3)** The Conservator shall make copies of a draft Plan of Management to which this section applies available for public inspection during office hours at the places specified in a notice published in the *Gazette* and in a daily newspaper.

**(4)** A notice under subsection (3) shall include a statement inviting persons to submit written comments about the draft Plan of Management to the Conservator at a specified address and within a specified period of not less than 21 days from the date of the notice.

### **Revision**

**201.** The Conservator may revise a draft Plan of Management—

- (a) in consideration of any written comments received from any person about the draft Plan; or
- (b) to correct any formal error.

### **Submission to Minister**

**202.** The Conservator shall submit a draft Plan of Management (as revised under section 201) to the Minister for approval, together with—

- (a) a written report setting out the issues raised in any written comments submitted to the Conservator in relation to the draft; and
- (b) a written report about the Conservator's consultation with the public and with any other person or authority about the draft.

**Consideration of Plan of Management by a Legislative Assembly committee**

**203.** Where the Conservator submits a draft Plan of Management to the Minister under section 202, the Minister shall, within 7 days of receiving the draft Plan forward—

- (a) a copy of the draft Plan;
- (b) a copy of the reports referred to in paragraphs 202 (a) and (b) relating to the draft Plan; and
- (c) all other documents relating to the draft Plan submitted to the Minister by the Conservator;

to an appropriate committee of the Legislative Assembly.

**Minister's powers**

**204.** On receipt of a draft Plan of Management submitted under section 202 or 205 for approval, the Minister shall consider any recommendation relating to the draft by a committee of the Legislative Assembly that considers the draft under section 203 and—

- (a) by instrument, approve a Plan of Management in the form in which the draft is submitted; or
- (b) refer the draft to the Conservator together with any of the following written directions:
  - (i) to conduct further specified consultation;
  - (ii) to consider any revision suggested by the Minister;
  - (iii) to revise the draft in a specified manner;
  - (iv) to defer, by notice published in the *Gazette*, until a specified date or the occurrence of a specified event, the re-submission of the draft to the Minister;
  - (v) to withdraw the draft by notice published in the *Gazette*.

**Referral back to the Conservator**

**205.** If the Minister refers a draft Plan of Management to the Conservator under paragraph 204 (b), the Conservator shall—

- (a) comply with the Minister's directions;
- (b) if the Minister gives a direction under subparagraph 204 (b) (i) or (ii)—if the Conservator thinks fit, revise the draft Plan;

- (c) revise the draft to correct any formal error; and
- (d) re-submit the draft Plan of Management (as revised) to the Minister for approval together with a written report about the Conservator's compliance with the Minister's directions and about any revision of the draft under paragraph (c).

### **Notice of revival of deferred draft Plan of Management**

**206.** Where the Conservator, in compliance with a direction of the Minister under subparagraph 204 (b) (iv), defers a draft Plan of Management, on the date specified in the notice of deferral, or as soon as possible after the occurrence of the event specified in that notice, as the case requires, the Conservator shall cause to be published in the *Gazette* and in a daily newspaper a notice stating that the draft is revived.

### **Notification, tabling, disallowance, date of effect**

**207. (1)** A Plan of Management, as approved by the Minister under section 204, is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**(2)** Notwithstanding paragraph 6 (1) (b) of the *Subordinate Laws Act 1989* in its application to the Plan of Management, a Plan of Management takes effect (subject to the remaining provisions of section 6 of that Act) on the expiration of 5 sitting days after it is laid before the Legislative Assembly, or on such later date as is specified in the Plan.

**(3)** Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to a Plan of Management as if the references in those provisions to 15 sitting days were references to 5 sitting days.

### ***Subdivision E—Leases and licences***

#### **Leases—generally**

**208. (1)** Except as provided by section 209, the Executive shall not grant a lease—

- (a) of public land; or
- (b) during the defined period—of land designated, in a draft variation of the Plan notified under section 19, to become public land.

**(2)** In subsection (1)—

“defined period”, in relation to land designated, in a draft variation of the Plan, to become public land, means the period of interim effect, under Part II, of that draft variation.

### **Grant of leases**

**209. (1)** On the written recommendation of the Conservator, the Executive may, on behalf of the Commonwealth, grant a lease of an area, or part of an area, of public land except where that area is reserved under the Plan as a wilderness area.

**(2)** On the written recommendation of the Conservator, the Executive may, on behalf of the Commonwealth, during the defined period referred to in subsection 208 (2), grant a lease of an area, or part of an area, of land designated in a draft variation of the Plan to become public land except where it is proposed in that draft variation that the area be reserved as a wilderness area.

### **Licences**

**210. (1)** The Executive may, on the written recommendation of the Conservator, grant a licence to a person to occupy or use an area of unleased public land.

**(2)** An application for a licence under subsection (1) shall—

- (a) be in writing signed by the applicant;
- (b) specify—
  - (i) the land in respect of which the licence is sought;
  - (ii) the period for which the licence is sought; and
  - (iii) the purposes for which it is proposed that the land should be used under the licence; and
- (c) be accompanied by the determined fee.

**(3)** A licence under subsection (1) shall—

- (a) be in writing;
- (b) apply to the person to whom it is granted and to all other persons to whom it is expressed to apply;
- (c) specify the period for which it is granted; and
- (d) be subject to such conditions, if any, as one specified in the licence.

### **Miner's rights in respect of public land**

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

#### ***Division 6—Administrative review***

### **Notice of various decisions**

**212. (1)** Where the Executive makes a decision—

- (a) for the purposes of subsection 167 (3) that a person is not eligible to be a lessee under a lease included in a class of leases specified under paragraph 167 (1) (a);
- (b) refusing to consent under subsection 167 (5) to—
  - (i) the assignment or transfer of a lease;
  - (ii) the subletting of the land comprised in a lease or any part of it; or
  - (iii) a lessee parting with possession of the land comprised in a lease or any part of it;
- (c) to terminate, under subsection 170 (1), the right of a person to the grant of a lease;
- (d) refusing to grant a further lease of Territory Land under section 171 or 172;
- (f) to terminate a lease under subsection 188 (1); or
- (g) to terminate a licence under subsection 188 (3);

the Executive shall, within 28 days of the decision, cause a notice in writing of the decision to be given to the applicant, lessee, licensee or person entitled, as the case requires.

**(2)** Where the Minister makes a decision—

- (d) refusing to issue, under subsection 179 (1), a certificate that a building and development provision of a lease has been fully complied with; or
- (e) refusing to consent, under subsection 180 (2), to a legal or equitable assignment or transfer of a lease or an interest in a lease;

he or she shall, within 28 days of the day of the decision, cause a notice in writing of the decision to be given to the lessee, former lessee or applicant, as the case requires.

**(3)** A notice under subsection (1) or (2) shall include—

- (a) a statement of the reasons of the Executive or the Minister for making the decision; and
- (b) a statement to the effect that, subject to Part VIA, an application may be made to the Appeals Board for a review of the decision.

**(4)** The validity of a decision referred to in subsection (1) or (2) is not to be taken to be affected by a failure to comply with subsection (3).

### **Review by Appeals Board**

**213.** Application may be made to the Appeals Board for a review of a decision referred to in subsection 212 (1) or (2).

### **Notice of decisions under section 174, 177, 178 or 184**

**213A. (1)** Where the Minister makes a decision—

- (a) under section 174 determining the value of improvements;
- (b) under subsection 177 (3) confirming a variation of rent, or setting a variation of rent aside and substituting another variation; or
- (c) refusing to authorise, under subsection 178 (1), the payment of an amount in respect of the surrender or termination of a lease;

he or she shall, within 28 days after the day of the decision, cause a notice in writing of the decision to be given to the lessee or former lessee, as the case requires.

**(2)** Where the Executive makes a decision under section 184 determining the amount payable in respect of the increase in the value of a lease that would result from a proposed variation of the lease it shall, within 28 days after making the decision, cause a notice in writing of the decision to be given to the lessee.

**(3)** A notice under subsection (1) or (2) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal for a review of the decision; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that the person to whom the notice is given may request a statement pursuant to section 26 of that Act.

(4) The validity of a decision referred to in subsection (1) or (2) is not to be taken to be affected by a failure to comply with subsection (3).

### **Review by Administrative Appeals Tribunal**

**213B.** Application may be made to the Administrative Appeals Tribunal for a review of a decision referred to in subsection 213A (1) or (2).

### *Division 7—Miscellaneous*

#### **Lessee may surrender lease wholly or in part**

**214. (1)** A person who holds a lease of Territory Land may, at any time, with the consent of the Executive, surrender the lease or any part of the land comprised in the lease.

(2) The Executive may agree to accept the surrender of a lease, or part of the land comprised in a lease, under subsection (1) either unconditionally or subject to such conditions as the Executive considers appropriate.

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

#### **Reduction of rent and relief from provisions of lease**

**215. (1)** The Executive may, in respect of any period, whether commencing before, at or after the commencement of this section, or whether commencing before, at or after the giving of the approval, approve of—

- (a) a reduction of the rent payable under a lease of Territory Land or of the amount payable in respect of any occupation of Territory Land; or
- (b) the grant of relief, to a lessee or occupier of Territory Land, from compliance, wholly or in part, with any provision to which his or her lease or occupation is subject;

and thereupon the liability or obligation of the lessee or occupier under the lease, or in respect of his or her occupation, shall, in respect of that period, be discharged to the extent of the reduction or grant of relief approved.

(2) Any grant of relief approved pursuant to subsection (1) may be unconditional or subject to such conditions as the Executive considers appropriate.

(3) Where the Executive approves a grant of relief to a lessee or occupier under subsection (1), it shall cause to be sent by post or delivered to the lessee

or occupier a memorandum specifying the reduction of rent or other grant of relief it has approved.

### **Access to leased land from public roads and carparks**

**216. (1)** Where the Executive grants a lease of Territory Land on behalf of the Commonwealth, it shall at all times during the term of the lease give the lessee—

- (a) direct access to the leased land from a public road or public carpark; or
- (b) access to the leased land from a public road or public carpark by means of an access road or track, or by other means, that the lessee may use without charge and for all purposes at any hour of the day or night.

**(2)** A means of access to leased land provided by the Executive pursuant to paragraph (1) (b) shall not interfere with any building, garden or stock yard on the land at the time the means of access is provided and the means of access shall be so located as to cause as little damage or inconvenience to the lessee as possible.

### **Notification of certain leases to the Legislative Assembly**

**216A. (1)** If the Executive grants a lease under paragraph 161 (1) (d), or section 163, 164 or 209, during a quarter, the Minister shall cause to be laid before the Legislative Assembly within 5 sitting days after the expiration of that quarter a statement that sets out, in respect of each lease granted under any of those provisions during that quarter—

- (a) the name of the person to whom the lease was granted;
- (b) a description of the land comprised in the lease that is in accordance with section 8 of the *Districts Act 1966*;
- (c) the amount (if any) paid for the grant of the lease; and
- (d) the provision of the Act under which the lease was granted.

**(2)** If the Executive grants an unrecommended lease during a quarter, the Minister shall cause to be laid before the Legislative Assembly within 5 sitting days after the expiration of that quarter a statement that sets out, in respect of each unrecommended lease granted during the quarter—

- (a) the name of the person to whom the lease was granted;



- (b) a description of the land comprised in the lease that is in accordance with section 8 of the *Districts Act 1966*;
- (c) the amount (if any) paid for the grant of the lease; and
- (d) the provision of the Act under which the lease was granted.

(3) The validity of a lease referred to in subsection (1) or (2) is not affected by a failure to comply with that subsection.

(4) In this section—

“quarter” means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in any year;

“unrecommended lease” means a lease in respect of which the Executive has been advised under subsection 165 (3) that the Authority considers that the lease could not appropriately be granted.

#### **Licences in respect of land that is not public land**

**217. (1)** A person may apply to the Executive for a licence to occupy or use an area of unleased Territory Land that is not public land.

(2) An application under subsection (1) shall—

- (a) be in writing signed by the applicant;
- (b) specify—
  - (i) the land in respect of which the licence is sought;
  - (ii) the period for which the licence is sought; and
  - (iii) the purposes for which it is proposed that the land should be used under the licence; and
- (c) be accompanied by the determined fee.

(3) On receiving an application under subsection (1) the Executive may grant the applicant a licence to occupy or use the land specified in the application for the purposes and period specified in the application.

(4) A licence under subsection (1) shall—

- (a) be in writing;
- (b) apply to the person to whom it is granted and to all other persons to whom it is expressed to apply;

- (c) specify the period for which it is granted; and
- (d) be subject to such conditions, if any, as are specified in the licence.

### **Reservation of minerals**

**218.** A reservation of minerals contained in a lease of Territory Land shall be read as a reservation of all minerals and mineral substances in or on the land, including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, stone, clay, gravel and sand.

### **Rights to extract minerals**

**219. (1)** The Executive may, by a lease or other agreement, grant a person the right to extract minerals from specified Territory Land.

**(2)** The provisions of a lease or other agreement entered pursuant to subsection (1) shall be such provisions as are agreed between the parties.

### **Access to lease documents and development agreements**

**220. (1)** Subsection 11 (2) of the *Freedom of Information Act 1989* does not apply to a document that is—

- (a) a lease;
- (b) a variation of a lease; or
- (c) a renewal of a lease;

where the document became a document of a Commonwealth agency before 1 January 1977.

**(2)** A document that is—

- (a) a lease;
- (b) a variation of a lease; or
- (c) a renewal of a lease;

shall be deemed not to be an exempt document for the purposes of the *Freedom of Information Act 1989*.

**(3)** A reference in this section to a lease shall be read as a reference to a lease of Territory Land.

### **False statements**

**221.** A person shall not make to—

- (a) the Executive;
- (b) a Minister;
- (c) a public servant; or
- (d) an agent of the Executive or a Minister;

a statement, either orally or in writing, in connection with an application for the grant, or a variation, of a lease of Territory Land that is, to the knowledge of the person, false or misleading in a material particular.

Penalty: \$200.

## **PART VI—APPROVALS AND ORDERS**

### *Division 1—Preliminary*

#### **Interpretation**

**222. (1)** In this Part, unless the contrary intention appears—

“application” means an application to conduct a controlled activity;

“approval” means—

- (a) an approval under section 230, 240 or 241; or
- (b) a decision under another Act that is declared by that Act to be an approval for the purposes of this Part;

“building work” has the same meaning as in the *Building Act 1972*;

“lease” and “lessee” have the same respective meanings as in Part V;

“objection” means an objection under section 235 or 237, as the case requires;

“order” means—

- (a) an order under section 256; or
- (b) a decision under another Act that is declared by that Act to be an order for the purposes of this Part;

“prescribed period” means such period as is specified in, or ascertained in accordance with, the regulations.

**(2)** A reference in this Part to the Executive is to be read as including a reference to a Minister acting on behalf of the Executive.

(3) A reference in this Part to the variation of a lease is to be read as including a reference to the surrender of a lease and the grant of a new lease to the same lessee over land—

- (a) that is the whole or part of the land comprised in the surrendered lease; and
- (b) that is not defined land within the meaning of Subdivision D of Division 3 of Part II;

subject to provisions that differ from those of the surrendered lease.

(4) Division 4 does not apply in relation to a controlled activity specified in item 2 or 3 of Schedule 4.

### **Relationship—controlled activities and concurring authorities**

223. For the purposes of this Part, an authority specified as a concurring authority in an item in Schedule 4 is a concurring authority in respect of the controlled activity specified in that item.

#### *Division 2—Approvals*

##### *Subdivision A—Preliminary*

### **Interpretation**

224. In this Division, a reference to a controlled activity is to be read as not including a reference to a controlled activity specified in Schedule 5 or declared under another Act to be a controlled activity for the purposes of that Schedule.

#### *Subdivision B—General*

### **Offence—controlled activities**

225. (1) A person who, without reasonable excuse, conducts—

- (a) a controlled activity specified in Schedule 4; or
- (b) an activity declared under another Act to be a controlled activity for the purposes of that Schedule;

other than in accordance with an approval, is guilty of an offence punishable, on conviction, by a fine not exceeding the amount specified in that Schedule in relation to that activity.

(2) A Territory authority shall not, without reasonable excuse, conduct a controlled activity except in accordance with an approval.

**Application to conduct controlled activities**

**226. (1)** An application for approval to conduct a controlled activity shall—

- (a) be in a form made available by the Minister;
- (b) set out, or be accompanied by, such information relating to the controlled activity as is required by the form;
- (c) be executed by the applicant;
- (d) be lodged with the Minister; and
- (e) be accompanied by the determined fee.

**(2)** An application made by a person who is not the lessee of the place to which the application relates shall be executed by the lessee of that place.

**(3)** The Minister may, before giving notice under section 229—

- (a) at the request of the applicant—make an alteration to an application or correct a formal error; or
- (b) of his or her own motion—correct a formal error in an application.

**(4)** Where the Minister makes an alteration or a correction under subsection (3), the Minister may, if the applicant is not the lessee of the place to which the application relates, require the applicant to notify the lessee of the place to which the application relates of an alteration or correction made under that subsection and to make a declaration that notice has been given.

**Register of applications, approvals and orders**

**227. (1)** The Minister shall keep a register of—

- (a) each alteration or correction to an application made pursuant to subsection 226 (3);
- (b) each application that has not been withdrawn, or that is not to be taken to have been withdrawn and in respect of which the period for making an application under section 275 or 276 has not expired;
- (c) each approval in respect of which the period for making an application under section 275 or 276 has not expired;
- (d) each approval, for the period for which it remains in force; and
- (e) each order, for the period for which it remains in force.

**(2)** A person may, during office hours—

- (a) inspect the register; and
- (b) on payment of the determined fee, make copies of, or take extracts from, the register or any part of a document relevant to an application.

### **Restrictions on inspection of applications**

**228. (1)** An applicant for approval to conduct a controlled activity may apply in writing to the Minister for a part of any copy of the application to be excluded from being made available to the public or for public inspection.

**(2)** The Minister may approve or refuse to approve an application under subsection (1).

**(3)** If, on application being made under subsection (1), the Minister is satisfied that—

- (a) a part of an application to conduct a controlled activity contains information related to the personal or business affairs of a person, being information—
  - (i) supplied to the Minister in confidence;
  - (ii) the publication of which would disclose a trade secret; or
  - (iii) the disclosure of which would, or would reasonably be expected to, adversely affect a person in respect of the lawful business affairs of that person; and
- (b) it would not be in the public interest for that part to be published;

the Minister shall cause that part to be excluded from any copy of the application to conduct the controlled activity made available to the public or for public inspection.

**(4)** Where a part of an application is excluded from the copies of that application made available to the public or for public inspection, each copy shall include a statement to the effect that an unspecified part of the application has been excluded for the purpose of protecting the confidentiality of information included in that part.

### **Notice of application**

**229. (1)** The Minister shall—

- (a) if a place adjoining the place to which an application relates—

- (i) is occupied—give notice by post of the making of the application to the lessee of each adjoining place at the address of the adjoining place; or
    - (ii) is unoccupied—give notice by post to the lessee of the adjoining place at the address of the lessee last known to the Minister;
  - (b) publish notice of the making of each application in a daily newspaper; and
  - (c) forward a copy of the application to each concurring authority in relation to the controlled activity to which the application relates.
- (2)** Paragraphs (1) (a) and (b) do not apply if—
- (a) in the opinion of the Minister, the number of places adjoining the place to which the application relates is such that it would be impractical to give notice by post to the lessee of each place; or
  - (b) the Plan specifies circumstances in which persons are not entitled to apply for review of decisions referred to in this Part.
- (3)** The Minister shall, if the application is to conduct a controlled activity specified in item 2 or 3 of Schedule 4, give notice in writing of the making of the application to each person having an estate or interest in the place to which the application relates (being an estate or interest that is registered under the *Real Property Act 1925*).
- (4)** The Minister—
- (a) shall forward to the Heritage Council for comment a copy of each application affecting the requirements specified in the Heritage Places Register or an interim Heritage Places Register for the conservation of the heritage significance of places specified in the Register; and
  - (b) may forward a copy of an application to any other person or body for comment.
- (5)** An applicant shall erect a sign in a conspicuous place in or on the place to which his or her application relates.
- (6)** A sign erected under subsection (5) shall—
- (a) be in a form approved by the Minister; and
  - (b) specify the nature of the controlled activity proposed to be conducted in or on that place.

(7) A reference in subsection (1) to a lessee is to be read as a reference to the person registered as lessee in the Register kept under the *Real Property Act 1925* in relation to the place to which the application relates.

(8) The regulations may prescribe circumstances in which the provisions of—

- (a) subsection (1); or
- (b) paragraph (1) (a) or (b);

need not be complied with.

### **Approvals**

**230. (1)** The Minister may approve or refuse to approve an application to conduct a controlled activity.

(2) The Minister shall not give an approval in terms inconsistent with the lease of the land to which the application relates.

(3) The Minister shall not approve an application without first obtaining the concurrence of each concurring authority in respect of the controlled activity to which the application relates.

(4) If the Minister fails to make a decision on an application before the expiration of the prescribed period, the Minister is to be taken to have refused to approve the application.

(5) Notwithstanding subsection (4), the Minister may approve an application at any time during the period commencing on the expiration of the prescribed period and ending on the expiration of the last day on which application may be made to the Appeals Board for a review of a decision to refuse to approve the application.

(6) Subsection (2) does not apply in relation to an approval to conduct a controlled activity specified in item 2 or 3 of Schedule 4.

### **Matters to be considered**

**231. (1)** Before approving or refusing to approve an application, the Minister shall—

- (a) consider—
  - (i) any comments of a person or body to which the application has been referred for comment;



- (ii) each objection or other submission the Minister has received in relation to the application which has not been withdrawn;
  - (iii) a preliminary assessment under Division 2 of Part IV, or a report under section 128; and
  - (iv) any Assessment made, or the report of any Inquiry conducted, in relation to the controlled activity to which the application relates; and
- (b) in the case of an application to conduct a controlled activity affecting the requirements for the conservation of the heritage significance of an Aboriginal place included in the Heritage Places Register or an interim Heritage Places Register—take all reasonable steps to consult with, and consider the views of, any relevant Aboriginal organisation.

(2) In paragraph (1) (b)—

“Aboriginal place” and “relevant Aboriginal organisation” have the same respective meanings as in Part III.

### **Duty of applicants**

**232. (1)** Instead of the Minister giving notice of an application in accordance with section 229 or another Act, the Minister may require the applicant—

- (a) to give such notice of the application as the Minister would, but for this subsection, be required to give in accordance with that section or other Act; and
- (b) to give notice to such other persons as are specified by the Minister.

(2) If an applicant fails to comply with a requirement made under subsection (1), the application is to be taken to have been withdrawn.

(3) The applicant shall pay the cost of a notice given in accordance with subsection (1).

(4) If the Minister publishes a notice under paragraph 229 (1) (b), the reasonable cost of the notice is a debt payable by the applicant to the Territory.

(5) A notice under subsection (1) shall be in a form approved by the Minister.

**More information**

**233. (1)** The Minister may, by notice in writing, require an applicant to furnish to the Minister, within the period specified in the notice (being a period of not less than 28 days), either orally or in writing, such further information relating to the application as is specified in the notice.

**(2)** An applicant may, at any time before the expiration of the period specified in a notice under subsection (1), apply to the Minister for an extension of the period within which the applicant is to furnish information.

**(3)** On receipt of an application under subsection (2), the Minister may grant an extension of the period of not more than 6 months.

**Effect of failure to furnish further information**

**234.** If a person fails to furnish information in accordance with a notice under subsection 233 (1), the applicant is to be taken to have withdrawn the application on the expiration of the period specified in the notice or any extension of that period.

**Duties of concurring authorities**

**235. (1)** A concurring authority to which an application is referred by the Minister shall, within the prescribed period, give notice in writing to the Minister that the concurring authority—

- (a) does not object to the approval of the application;
- (b) does not object to the approval of the application if the approval is given subject to conditions specified by the concurring authority in the notice; or
- (c) objects to the approval of the application.

**(2)** The Authority shall, before giving notice under subsection (1) in relation to a controlled activity specified in item 2 or 3 of Schedule 4, consider whether or not the controlled activity proposed to be conducted would be inconsistent with—

- (a) the planning principles set out in the Plan; or
- (b) any directions of the Executive in force under section 37.

**(3)** For the purposes of paragraph (1) (b), a concurring authority may include a condition that a controlled activity to which the application relates is to be done to the satisfaction of the concurring authority or a person or body specified by the concurring authority in the notice.

(4) If a concurring authority to which an application is referred fails to give notice to the Minister within the prescribed period the concurring authority is to be taken to have given notice to the Minister that it does not object to the approval of the application.

### **Environmental Assessments and Inquiries**

**236.** The Minister may—

- (a) direct that an Assessment be made; or
- (b) establish a panel to conduct an Inquiry;

about any aspect of an application.

### ***Subdivision C—Objections***

#### **Objections—general**

**237.** (1) Any person who may be affected by the approval of an application may, within the prescribed period, object to the grant of the approval.

(2) An objection shall be made to the Minister in writing and shall set out the grounds of the objection.

(3) The Minister shall give an applicant for approval to conduct a controlled activity a copy of each objection to the application, and any other submission received by the Minister in relation to the application, which has not been withdrawn.

#### **Inspection of objections**

**238.** The Minister shall make a copy of each objection available for inspection by members of the public during office hours until the expiration of the period during which application may be made to the Appeals Board for a review of a decision in relation to the application.

#### **Identity of objectors**

**239.** The Minister may, on request by a person making an objection, exclude the identity of the objector from being made available under subsection 237 (3) or section 238 if, in the Minister's opinion, based on reasonable grounds, it would not be in the public interest for that identity to be published.

***Subdivision D—Approvals*****Circumstances in which Executive approves applications, other than lease variations, subdivisions, consolidations**

**240. (1)** This section applies to an application to conduct a controlled activity, other than a controlled activity specified in item 2 or 3 of Schedule 4, made by—

- (a) the Executive; or
- (b) a Territory authority.

**(2)** Where, in respect of an application to which this section applies, a concurring authority has, under subsection 235 (1), notified the Minister that the concurring authority—

- (a) objects to the approval of the application; or
- (b) does not object to the approval of the application if it is given subject to conditions specified in the notice under that subsection;

the Executive may—

- (c) notwithstanding that the concurring authority has advised the Minister that the concurring authority objects to the approval of the application—approve the application; or
- (d) if the concurring authority has stated that it does not object if the approval is given subject to conditions—approve the application subject to conditions, whether or not all or any of those conditions are inconsistent with the conditions specified by the concurring authority in the notice under subsection 235 (1).

**(3)** Notwithstanding section 283 or the provisions of any other Act, the power to approve an application under subsection (2) may only be exercised by the Executive.

**Circumstances in which Executive approves applications for lease variations, subdivisions, consolidations**

**241. (1)** This section applies to an application to conduct a controlled activity specified in items 2 and 3 of Schedule 4.

**(2)** Where, in relation to an application to which this section applies—

- (a) a concurring authority does not object and another concurring authority objects to the approval of the application; or

- (b) both concurring authorities do not object to the approval of the application subject to conditions, but those conditions are, in the opinion of the Minister, inconsistent;

the Executive may, notwithstanding that a concurring authority has advised the Minister that the concurring authority objects to the approval of the application, does not object to the approval or does not object to the approval subject to conditions—

- (c) approve or refuse to approve the application; or
- (d) approve the application subject to conditions, whether or not all or any of the conditions are inconsistent with the conditions specified by the concurring authority in the notice under subsection 235 (1).

(3) Notwithstanding section 283 or the provisions of any other Act, the power to approve or refuse to approve an application under paragraph (2) (c) or (d) may only be exercised by the Executive.

#### **Application approved—notification of decision**

242. (1) If the Minister approves an application, the Minister shall give the applicant written notice of his or her decision, and the date on which the decision takes effect.

- (2) Where, under section 240 or 241, the Executive—
  - (a) approves or refuses to approve an application; or
  - (b) approves an application subject to conditions;

the Executive shall give the applicant written notice of the decision and the date on which the decision takes effect.

(3) If the Minister or the Executive approves an application to conduct a controlled activity specified in item 2 or 3 of Schedule 4, the Minister or the Executive, as the case may be, shall give written notice of the decision to the Registrar-General.

#### **Notification of decision to approve or refuse to approve application**

243. (1) Notwithstanding section 242, if the Minister or the Executive approves an application against which decision a person may make application to the Appeals Board under section 276, the Minister or the Executive, as the case requires, shall—

- (a) if the approval is in relation to an application to which subsection 229 (8) applies—publish notice of the decision in a daily newspaper; and

- (b) give notice of the decision to—
  - (i) each concurring authority;
  - (ii) each person notified personally under paragraph 229 (1) (a); and
  - (iii) each person who objected under subsection 237 (1).

**(2)** Paragraph (1) (a) does not apply in relation to an approval if regulations are in force under subsection 229 (8) prescribing circumstances in which the provisions of paragraph 229 (1) (b) need not be complied with in respect of an application to which the approval relates.

- (3)** A notice under paragraph (1) (b) shall—
  - (a) contain—
    - (i) a description of the place to which the decision relates; and
    - (ii) a brief description of the controlled activity the subject of the decision;
  - (b) set out the decision and the reasons for the decision; and
  - (c) specify—
    - (i) the place and times at which a copy of the application and the decision may be inspected; and
    - (ii) the manner in which application may be made to the Appeals Board for a review of the decision.

**(4)** If the Minister or Executive refuses to approve an application, the Minister or Executive, as the case requires, shall give written notice of the decision to—

- (a) the applicant;
- (b) each concurring authority;
- (c) each person notified personally under paragraph 229 (1) (a); and
- (d) each person who objected under subsection 237 (1).

**(5)** A notice under subsection (4) shall set out the reasons for the decision.

**Notification where more than one objector**

**244.** Where a number of persons make 1 objection, the Minister or Executive is to be taken to have complied with subsection 243 (1) or (3), as the case may be, if the Minister or Executive (as the case requires) gives notice—

- (a) where the name and address of 1 of those persons has been given to the Minister as the person to whom notice of the decision is to be given—to that person; or
- (b) where no name and address has so been given—to 1 of the persons who made that objection.

**Conditional approvals**

**245. (1)** Subject to this section and sections 240, 241 and 246, the Minister may approve an application subject to such conditions as are specified by the Minister, after taking into consideration the matters referred to in paragraph 231 (1) (a).

**(2)** The Minister—

- (a) shall include in an approval any condition which is required to be included by the Plan or by a concurring authority; and
- (b) shall not include in an approval a condition inconsistent with a condition included under paragraph (a).

**(3)** Without limiting the generality of subsection (1), the conditions subject to which an approval may be given may include a condition—

- (a) that a specified controlled activity is to be conducted to the satisfaction of the Minister or a specified person or body;
- (b) requiring a controlled activity to be carried out in stages within the periods specified in or under the approval;
- (c) specifying a period within which a controlled activity or any stage of the activity is to be conducted;
- (d) that an approval does not take effect unless a specified approval is revoked, amended or given;
- (e) in relation to an approval to conduct a controlled activity for a specified period, that—
  - (i) building works or other works carried out in or on a place the subject of the approval is to be removed at the expiration of that period; or

- (ii) the place is to be restored to a specified state at the expiration of that period;
- (f) that a bond be entered into securing performance against the conditions of an approval;
- (g) that the applicant is to enter into an agreement with the Minister for the conservation of the heritage significance of places specified in the Heritage Places Register;
- (h) that controlled activities be conducted to a specified standard;
- (j) that specified works, services or facilities which the Minister considers reasonable in the circumstances—
  - (i) be provided by the applicant on or to a place the subject of the approval, or on or to another place;
  - (ii) be paid for in whole or in part by the applicant; or
  - (iii) be provided on or to a place the subject of the approval by agreement between the applicant and the Minister responsible for the provision of the works, services or facilities;
- (k) that plans, drawings or other documents be prepared by the applicant and lodged with the Minister for approval before commencing to conduct the controlled activity (whether in whole or in part); or
- (l) requiring changes to be made to any plan, drawing or other document forming part of the application for approval.

(4) The Minister may approve an amendment to a plan, drawing or other document approved under paragraph (3) (k) if the amendment is not inconsistent with subsection 230 (2) or an approval under paragraph (3) (k).

#### **Minister to resolve certain inconsistencies**

**246. (1)** If, in relation to an application (other than an application to which sections 240 and 241 apply), the Minister is of the opinion that there is an inconsistency between the conditions imposed by concurring authorities in respect of the controlled activity to which the application relates, the Minister shall give each concurring authority written notice that the Minister is of that opinion.

**(2)** On receipt of a notice under subsection (1), each concurring authority the subject of the notice shall endeavour to resolve the inconsistency.



(3) The concurring authorities to which a notice has been given under subsection (1) shall, before the expiration of the prescribed period, notify the Minister in writing that—

- (a) the concurring authorities have resolved the inconsistency to which the notice relates; or
- (b) the concurring authorities are unable to resolve the inconsistency.

(4) A notice to the effect of paragraph (3) (a) shall specify the conditions (if any) which the concurring authorities have resolved to impose.

(5) If—

- (a) the Minister receives a notice under subsection (3) to the effect of paragraph (3) (b); or
- (b) the concurring authorities, to which a notice has been given under subsection (1), fail to give the Minister notice under subsection (3) within the prescribed period;

the Minister shall give such directions or make such alterations to the conditions as are necessary to resolve the inconsistency.

### **Minor amendments**

**247.** (1) The lessee or an occupier of a place in respect of which an approval (other than an approval in respect of a controlled activity specified in item 2 or 3 of Schedule 4) is in force may apply in writing to the Minister to amend the approval.

(2) The Minister may amend an approval, if satisfied that the amendment—

- (a) does not change the effect of a condition subject to which the approval was given;
- (b) does not adversely affect the interests of a concurring authority;
- (c) will not cause a significant increase in detriment to any person; and
- (d) does not change the controlled activity for which the approval was given, other than a change to the description of the controlled activity.

(3) The Minister shall give notice of an amendment—

- (a) to the person who made the application to amend;

- (b) if that person is not the lessee or occupier of the place to which the approval relates—to the lessee; and
- (c) to any relevant Territory authority.

### **Corrections**

**248.** If the Minister is satisfied that an approval contains a formal error, the Minister shall—

- (a) correct the approval; and
- (b) notify the applicant in writing.

### **Approval—when takes effect**

**249.** The approval of an application by the Minister, or by the Executive under section 240 or 241, takes effect—

- (a) if no objection to the application has been made under section 237 and whether or not a condition is imposed on the approval—on the day on which the approval is given;
- (b) if an objection to the application has been made under section 237 and no application is made to the Appeals Board for a review of the decision within 28 days after the date of the decision—on the day following the expiration of that period of 28 days; or
- (c) if application is made to the Appeals Board for a review of the decision to approve the application—on the day on which the Appeals Board decision affirming or varying the decision is made.

### **Execution of certain approvals**

**250.** Subject to section 186, where an approval to conduct a controlled activity specified in item 2 or 3 of Schedule 4 takes effect pursuant to section 249, the Executive shall cause the variation of the lease or the subdivision or consolidation of land to be executed in accordance with the terms of the approval.

### **Expiration of approvals**

**251. (1)** An approval to conduct a controlled activity (other than a controlled activity specified in item 2 or 3 of Schedule 4) expires if—

- (a) the activity or any stage of the activity is not commenced within the period specified in the approval;

- (b) the activity or any stage of the activity is not completed within the period specified in the approval; or
- (c) if no period is specified in an approval for the commencement of an activity or any stage of an activity—the activity or any stage of the activity is not commenced within 2 years after the date of the approval.

(2) The expiry of an approval does not affect anything done under the approval before the expiry.

### **Extension of time**

**252. (1)** The lessee or occupier of a place in respect of which an approval to conduct a controlled activity (other than a controlled activity specified in item 2 or 3 of Schedule 4) applies (being an approval which specifies the date for the completion of the activity or any stage of the activity) may, before the expiration of the approval, apply to the Minister for an extension of the period within which to complete the activity or any stage of it.

(2) On receipt of an application under subsection (1), the Minister may extend the period within which the conduct of a controlled activity or any stage of it is to be commenced or it or any stage of it is to be completed.

### **Revocation of approval**

**253.** The Minister may revoke an approval—

- (a) if satisfied that the approval was obtained by fraud or misrepresentation; or
- (b) where the approval is in respect of a place that is specified in the Heritage Places Register or interim Heritage Places Register—if the applicant is convicted of an offence under this Part.

### ***Division 3—Orders***

### **Interpretation**

**254.** In this Division, unless the contrary intention appears, a reference to a controlled activity is to be read as not including—

- (a) a reference to a controlled activity specified in Schedule 4; or
- (b) an activity declared under another Act to be a controlled activity for the purposes of that Schedule.

**Offences—orders**

**255. (1)** A person who, without reasonable excuse, contravenes an order is guilty of an offence punishable, on conviction, by a fine not exceeding the amount specified in Schedule 5 in relation to the activity in respect of which the order was made.

**(2)** A Territory authority shall not, without reasonable excuse, contravene an order.

**Application for order**

**256. (1)** A person may apply to the Registrar for an order against—

- (a) the lessee or occupier of a place on which a controlled activity is being, or is to be, conducted; or
- (b) any person by whom or on whose behalf the activity was, is being, or is to be, conducted.

**(2)** An application under subsection (1) shall set out the grounds on which the order is sought.

**(3)** On receiving an application under subsection (1) the Registrar shall give notice in writing of the application to—

- (a) the Minister; and
- (b) each person against whom the order is sought.

**(4)** A notice under subsection (3) shall—

- (a) contain a statement to the effect that the person to whom it is given may, within 7 days after the day on which he or she receives the notice, make submissions to the Registrar in relation to the making of the order; and
- (b) have attached to it a copy of the application to which the notice relates.

**(4A)** Before deciding whether to make an order the Registrar shall consider any submissions made by—

- (a) the Minister; or
- (b) a person against whom the order is sought;

within 7 days after the day on which he or she received notice under subsection (3) of the application for the order.

**(4B)** The Registrar shall determine an application under subsection (1) by—

- (a) making the order; or
- (b) refusing to make the order.

**(4C)** The Registrar shall cause a copy of each order made under subsection (4B) to be given to the Minister as soon as practicable after the order is made.

**(4D)** The Executive may, of its own motion, make an order under this section.

**(4E)** An order under subsection (4D) shall be tabled in the Legislative Assembly within 3 sitting days after the date of the order.

**(5)** An order—

- (a) shall specify—
  - (i) the grounds on which the order is made; and
  - (ii) its date of effect; and
- (b) may direct any person against whom it is made—
  - (i) to stop conducting a controlled activity specified in Schedule 4 without approval;
  - (ii) to stop, or not to commence to conduct, a controlled activity that is not specified in Schedule 4;
  - (iii) not to commence to conduct a controlled activity without approval;
  - (iv) to comply with the terms of an approval to conduct a controlled activity; or
  - (v) to stop conducting a controlled activity otherwise than in accordance with the conditions subject to which the approval to conduct the activity was given.

**(6)** If the Registrar fails to make an order under subsection (4B) within the prescribed period, the Registrar is, for the purposes of that subsection, to be taken to have refused to make an order.

**Notice of making of order**

**257. (1)** If the Registrar makes an order under section 256, the Registrar shall give notice of the making of the order to—

- (a) any person to whom the order is directed;
- (b) the applicant;
- (c) the lessee and occupier of the place to which the order relates;
- (d) the Registrar-General; and
- (e) any other person whose interests are, in the opinion of the Registrar, adversely affected by the order.

**(2)** If the Executive makes an order under section 256 it shall cause notice of the making of the order to be given to—

- (a) any person to whom the order is directed;
- (b) the lessee and occupier of the place to which the order relates;
- (c) the Registrar-General; and
- (d) any other person whose interests are, in the opinion of the Executive, adversely affected by the order.

**Effect of order in certain circumstances**

**258. (1)** Where the Registrar or the Executive, by order, directs a person to refrain from conducting a controlled activity, the person to whom the order is directed is guilty of an offence under section 255 if the person contravenes the order at any time during the period between the date the order takes effect and the date on which it is revoked.

**(2)** An order made by the Registrar directing a person to do an act or thing does not take effect until—

- (a) the period for making application to the Appeals Board for a review of the decision to make the order has expired; or
- (b) if within that period application is made for a review of the decision— the decision is affirmed or varied by the Appeals Board.

**Non-compliance**

**259. (1)** Whether or not proceedings are instituted for an offence against this Part, the Minister may—

- (a) direct that a person authorised by the Minister enter a place on which a controlled activity is being conducted and carry out work or conduct an activity to which an order relates which was not carried out within the period specified in the order; or
- (b) apply to the Supreme Court—
  - (i) for an injunction restraining any person from contravening an order; or
  - (ii) for an order requiring a person to do an act or thing in accordance with the terms of an approval.

(2) The reasonable cost of work carried out under paragraph (1) (a) is a debt payable by the person against whom the order was made to the Territory.

(3) The Minister shall not make a direction under paragraph (1) (a)—

- (a) if application is made to the Appeals Board for a review of the decision to make the order to which the proposed direction relates—unless the decision to make the order is upheld; or
- (b) if no application is made to the Appeals Board—until the expiration of the period within which such an application may be made.

### **Future owners or occupiers**

**260. (1)** An order under this Division may be expressed to bind any subsequent lessee or occupier of land to the same extent as if the order had been made against that subsequent occupier or lessee.

(2) The Registrar and the Executive shall, on making an order of the kind referred to in subsection (1), cause a copy of the order to be sent to the Registrar-General.

(3) The Registrar and the Executive shall, on revoking an order of the kind referred to in subsection (1), cause written notice of the revocation to be given to the Registrar-General.

### **Powers of Supreme Court**

**261. (1)** The Supreme Court may, on application being made under paragraph 259 (1) (b) or by any other person, grant an injunction restraining a person from engaging in conduct which would contravene an order and, if in the Court's opinion it is desirable to do so, requiring the person to do any act or thing.

(2) Where, in the opinion of the Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Court may rescind or vary an injunction granted under subsection (1) or (2).

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

(5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing.

#### *Division 4—Enforcement*

##### *Subdivision A—Preliminary*

#### **Things connected with offences**

**262. (1)** For the purposes of this Division, a thing is connected with a particular offence if—

- (a) it is a thing with respect to which the offence has been committed;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is or was intended to be used, for the purposes of committing the offence.

(2) A reference in this Division to an offence is to be read as including a reference to an offence that there are reasonable grounds for believing has been or will be committed.

(3) Where a person is authorised under section 263 or this Division to enter a place, and enters that place, a reference to the occupier of such a place shall



include a reference to a person reasonably believed by the authorised person to be the occupier, or to be in charge, of that place.

### **Inspectors**

**263. (1)** The Minister may, in writing, appoint a person to be an inspector for the purposes of this Part.

**(2)** An inspector shall, subject to this Part and the regulations, perform such duties as the Minister directs.

### **Identity cards**

**264.** The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

### **Return of identity cards**

**265.** A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister upon ceasing to be an inspector.

Penalty: \$100.

## ***Subdivision B—Inspection***

### **Inspections etc.**

**266.** For the purposes of ascertaining whether or not a controlled activity is being conducted in or on any place—

- (a) in accordance with an approval;
- (b) without an approval;
- (c) contrary to the conditions of an approval; or
- (d) in accordance with, or in contravention of, an order;

an inspector may enter the place—

- (e) with the consent of the occupier of the place;
- (f) pursuant to a warrant issued under section 273; or
- (g) with such assistance and by such force as is reasonable, where the inspector believes on reasonable grounds that the circumstances are of such seriousness and urgency as to require the immediate exercise of

those powers without the authority of a warrant issued under section 273;

and, subject to section 268, exercise any power referred to in section 269 if the inspector believes on reasonable grounds that a controlled activity is, or is intended to be, conducted in or on that place.

### **Consent to entry**

**267. (1)** Before seeking the consent of the occupier of a place for the purposes of section 266, an inspector shall inform the occupier that he or she may refuse to give that consent.

**(2)** If an inspector obtains the occupier's consent for those purposes, the inspector shall ask the occupier to sign a written acknowledgment—

- (a) that the occupier has been informed that he or she may refuse to give consent, for the purposes of section 266, for the inspector to enter the place and to exercise any power under section 269;
- (b) that the occupier has given the inspector that consent; and
- (c) of the day on which, and the time at which, the consent was given.

**(3)** Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of section 266 and an acknowledgment, in accordance with subsection (2), signed by the occupier, is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

### **Display of identity cards**

**268.** An inspector who enters a place under section 266 is not entitled to remain in or on the place if, on request by the occupier, the inspector does not show his or her identity card to the occupier.

### **Powers of inspection**

**269. (1)** Subject to this Part, an inspector who enters a place under section 266 may—

- (a) inspect, examine, take measurements of, or conduct tests concerning, the premises or a controlled activity conducted in or on that place;
- (b) take such photographs, video recordings, or make such sketches or other recordings, as the inspector believes on reasonable grounds to be necessary;

- (c) take samples of any thing that the inspector believes on reasonable grounds is connected with an offence against this Part;
- (d) seize any thing that the inspector believes on reasonable grounds to be connected with an offence against this Part;
- (e) inspect, make copies of, or take extracts from, any document in or on that place that the inspector believes on reasonable grounds is connected with an offence against this Part;
- (f) require any person in or on the place—
  - (i) to give the inspector such information; or
  - (ii) to produce to the inspector any document containing such information;relating to the use of the place in connection with the conduct of a controlled activity;
- (g) require any person in or on the place to answer questions; and
- (h) require any person on the premises to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.

(2) A person shall not, without reasonable excuse, fail to comply with a requirement made of the person under paragraph (1) (f), (g) or (h).

Penalty: \$1,000.

### **Work carried out at direction of inspector**

**270.** Where an authorised person enters land pursuant to paragraph 259 (1) (a), the authorised person shall not carry out the work or conduct the controlled activity otherwise than in accordance with the directions of an inspector.

### **Taking samples**

**271.** An inspector who takes samples under paragraph 269 (1) (c) shall—

- (a) ensure that the sample is such as to permit paragraph (c) to be complied with;
- (b) give a receipt for the sample to the occupier of the place from which the sample was taken;
- (c) divide the sample into 2 parts as nearly as practicable identical in size and composition to each other and each suitable for the purpose of analysis;

- (d) place each of those parts in a separate container and seal each container;
- (e) attach to each container a label bearing the signature of the inspector and particulars of the date and time when, and the place at which, the sample was taken; and
- (f) give 1 container to the occupier of the place.

**Disposal of seized items**

**272. (1)** Where a thing has been seized under paragraph 269 (1) (d) and—

- (a) a prosecution for an offence against this Part in connection with that thing has not been instituted within 90 days after the day of seizure; or
- (b) a person is so charged but is not convicted;

subject to subsection (2), the Minister shall take all reasonably practical steps to give the thing to the person to whom the Minister reasonably believes to be entitled to it.

**(2)** Where a person is—

- (a) convicted of an offence against this Part; or
- (b) dealt with under section 556A of the Crimes Act, 1900 of the State of New South Wales in its application in the Territory in respect of an offence against this Act;

the court may order that any thing seized under paragraph 269 (1) (d) and connected with the offence—

- (c) be given to the person who appears to the court to be entitled to it; or
- (d) be forfeited to the Territory.

**Search warrants**

**273. (1)** Where an inspector suspects on reasonable grounds that there is in or on any place a thing of a particular kind connected with a particular offence against this Part or the regulations, the inspector may—

- (a) lay before a magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the place for things of that kind.

(2) Where an application is made under subsection (1) for a warrant to search a place, a magistrate may, subject to subsection (3), issue a warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place;
- (b) to ascertain whether or not a controlled activity is being conducted in or on the place;
- (c) to search the place for things of the kind specified in the warrant; and
- (d) to seize any thing found in the course of the search that the inspector believes on reasonable grounds to be a thing of that kind connected with the relevant offence.

(3) A magistrate shall not issue a warrant under subsection (2) unless—

- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify the nature of the relevant offence;
- (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night;
- (d) include a description of the kinds of things in relation to which the powers under the warrant may be exercised; and
- (e) specify the date, being a date not later than 28 days after the date of issue of the warrant, on which the warrant ceases to have effect.

### **Obstruction of inspectors**

**274.** A person shall not, without reasonable excuse, obstruct or hinder an inspector in the exercise of his or her powers under this Part.

Penalty: \$5,000 or imprisonment for 6 months.

***Division 5—Miscellaneous******Subdivision A—Review of decisions*****Review—applicants**

**275. (1)** This section applies to—

- (a) a decision of the Minister—
  - (i) refusing to approve an application under subsection 228 (2);
  - (ii) refusing to give an approval under section 230;
  - (iii) refusing to grant an extension of a period under subsection 233 (3);
  - (iv) refusing to exclude the identity of an objector under section 239;
  - (v) giving an approval under section 245 subject to conditions;
  - (vi) refusing to give an approval under subsection 245 (4);
  - (vii) refusing to amend an approval under section 247;
  - (viii) refusing to extend time under section 252; or
  - (ix) revoking an approval under section 253;
- (b) a decision of a concurring authority under paragraph 235 (1) (b) or (c); and
- (c) a decision of the Executive under section 240 or 241.

**(2)** Where the Minister, a concurring authority or the Executive, as the case may be, makes a decision to which this section applies, the person who made the application in respect of which the decision was made may apply to the Appeals Board for a review of the decision.

**(3)** Where—

- (a) an approval that is in force contains a condition that a specified controlled activity is to be conducted to the satisfaction of the Minister or a specified person or body; and
- (b) the Minister or that specified person or body makes a decision that the activity has not been conducted to the satisfaction of the Minister or that person or body;

the applicant to whom the decision relates may apply to the Appeals Board for a review of the decision.

(4) Where the Minister, a concurring authority or the Executive makes a decision of a kind to which this section applies, the Minister shall cause notice in writing of the decision to be given to the applicant.

(5) Where the Minister or a person or body referred to in subsection (3) makes a decision of a kind referred to in that subsection, the Minister, or the person or body making the decision shall cause notice in writing of the decision to be given to the applicant to whom the decision relates, as the case requires.

(6) A notice under subsection (4) or (5) shall include—

- (a) a statement of the reasons for making the decision of the person or body who made it; and
- (b) a statement to the effect that, subject to Part VIA, application may be made to the Appeals Board for a review of the decision.

(7) The validity of a decision to which this section applies is not to be taken to be affected by a failure to comply with subsection (6).

#### **Review—objectors, third parties**

**276. (1)** Application for a review of—

- (a) a decision of the Minister to approve an application under section 230 or 245;
- (b) a decision of a concurring authority not to object to the approval of an application under section 235; or
- (c) a decision of the Executive to approve an application under section 240 or 241;

may be made by a person to the Appeals Board within 28 days after the day on which the person was notified of the decision if—

- (d) the person making the application is a person who objected under section 237; or
- (e) the Appeals Board has reasonable grounds for believing that the applicant was, in the circumstances, unable to object to the making of the decision within the prescribed period.

(2) A notice given under section 243 to a person who objected under section 237 shall include a statement to the effect that, subject to Part VIA, the

person may apply to the Appeals Board within 28 days after the day on which he or she is notified of the decision for a review of the decision to which the notice relates.

(3) The validity of a decision to which this section applies is not to be taken to be affected by a failure to comply with subsection (2).

(4) If regulations are made for the purposes of subsection 229 (8) then, in respect of a decision in respect of which those regulations apply (other than in respect of a matter to which subsection (5) of this section applies), subsection (1) of this section does not apply, and any person whose interests are affected by the decision may apply to the Appeals Board for a review of the decision.

(5) A person is not entitled to make an application under this section if—

- (a) the Minister has issued a certificate that, an Environmental Impact Statement made, or an Inquiry conducted, under Part IV, has substantially dealt with matters forming the basis of the Minister's decision to give the applicant approval to conduct a controlled activity; or
- (b) circumstances are specified in the Plan pursuant to paragraph 7 (3) (c).

(6) At the hearing of a proceeding before the Appeals Board, the Board shall have regard to—

- (a) any decisions or recommendations of a Committee of the Legislative Assembly in relation to; and
- (b) any Environmental Impact Statement made, or Inquiry conducted into;

a matter which is in issue in the hearing.

(7) A certificate under paragraph (5) (a) shall be tabled in the Legislative Assembly on the first sitting day of the Assembly after the date of the certificate.

### **Review—orders**

**277. (1)** A person whose interests are affected by a decision of the Registrar—

- (a) to make an order under section 256;
- (b) to refuse to make an order under section 256; or
- (c) to make an order subject to a direction of a kind referred to in paragraph 256 (5) (b);



may apply to the Appeals Board for a review of the decision.

(2) Where the Registrar makes a decision of the kind referred to in subsection (1), the Registrar shall cause notice of the decision to be given to the applicant and any other person whose interests are, in the opinion of the Registrar, adversely affected by the decision.

(3) A notice under subsection (2) shall include—

- (a) a statement of the reasons of the Registrar for the decision; and
- (b) a statement to the effect that, subject to Part VIA, application may be made to the Appeals Board for a review of the decision.

(4) The validity of a decision to which this section applies is not to be taken to be affected by a failure to comply with subsection (3).

#### **Notification of objectors**

**278. (1)** Where an applicant makes an application under section 275 for the review of a decision referred to in paragraph 275 (1) (a), (b) or (c), the Minister shall, as soon as practicable after being notified of the application for review, give notice to each concurring authority and to each person who objected under section 237 that the applicant has applied for a review of the decision.

(2) A notice under subsection (1) shall include a statement to the effect that the person to whom it is given is entitled, on application to the Appeals Board, to be made a party to the proceedings for the review.

#### **Notification of applicants**

**279. (1)** Where an objector makes an application under section 276 for the review of a decision, the objector shall, at the same time, give notice to the person who made the application for approval of the decision in relation to which the objector has applied for review.

(2) A notice under subsection (1) shall include a statement to the effect that the person to whom it is given is entitled, on application to the Appeals Board, to be made a party to the proceedings for the review.

(3) In subsection (1)—

“objector” means a person referred to in paragraph 276 (1) (d) or (e) and includes a person who has made application under subsection 276 (4).

**Applicants and objectors may be made parties to proceedings**

**280.** Where—

- (a) an applicant makes application under section 275 for the review of a decision referred to in paragraph 275 (1) (a), (b) or (c); or
- (b) an objector makes application under section 276 for the review of a decision;

a person to whom notice has been given under section 278 or 279 may apply to the Appeals Board to be made a party to the proceedings and, upon such an application being made, the Board shall, by order, make the person a party to the proceedings.

**Failure to comply with certain notification requirements**

**281.** The validity of an approval is not to be taken to be affected by a failure by the applicant to comply with subsection 229 (5).

***Subdivision B—General*****Regulations—Part VI**

**282.** The regulations may make provision in relation to—

- (a) the lodging of applications;
- (b) the form and conditions of a bond referred to in paragraph 245 (3) (f), including the method of calculating the amount of the bond and the conditions of payment under the bond;
- (c) the exemption of the Territory or a Territory authority from the requirements of all or any of the provisions of this Part;
- (d) the circumstances, whether generally or in a particular case, in which an exemption under paragraph (c) applies;
- (e) exempting the conduct of a specified controlled activity, or a controlled activity included in a specified class of controlled activities, either absolutely or subject to conditions, from the application of all or any of the provisions of this Part or the regulations; and
- (f) the extension of any period within which action is to be taken by the Executive, a person, a concurring authority or the Minister, under this Part or the regulations.

**PART VIA—LAND AND PLANNING APPEALS BOARD**

***Division 1—Preliminary***

**Interpretation**

**282A. (1)** In this Part, unless the contrary intention appears—

“Chairperson” means the Chairperson of the Appeals Board;

“Deputy Chairperson” means the Deputy Chairperson of the Appeals Board;

“enactment” means an Act or a subordinate law (including part of an Act or such a law);

“member” means a member of the Appeals Board and includes the Chairperson and the Deputy Chairperson;

“working day” means a day other than a Saturday, a Sunday or a public holiday.

**(2)** A reference in this Part to a decision includes a reference to—

- (a) making, suspending, revoking or refusing to make an order or determination;
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue an authority or other instrument;
- (d) imposing a condition or restriction;
- (e) making a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, an article; or
- (g) doing or refusing to do any other act or thing.

**(3)** Where a person has nominated an address in the Territory at which documents may be served on the person, a document or statement that is required by this Part to be given to the person may be sent to that address.

***Division 2—Establishment of Land and Planning Appeals Board***

**Establishment of Board**

**282B.** There is hereby established a Land and Planning Appeals Board which shall consist of—

- (a) a Chairperson;
- (b) a Deputy Chairperson; and
- (c) such number of other members (not exceeding 5) as are appointed in accordance with this Part.

### **Appointment of members**

**282C. (1)** The members of the Appeals Board shall be appointed by the Minister by instrument.

(2) A person who is to be appointed as a member of the Appeals Board shall be appointed as the Chairperson, the Deputy Chairperson or as a member.

(3) The members shall hold office on a part-time basis.

(4) Subject to this Part, a member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(5) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(6) Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to an instrument under subsection (1) as if a reference in each of those provisions to 15 sittings days were a reference to 6 sitting days.

### **Remuneration and allowances**

**282D. (1)** A member shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply to—

- (a) the remuneration of a member if there is a subsisting determination relating to remuneration to be paid to the member; or
- (b) an allowance of a kind in respect of a member if there is a subsisting determination relating to an allowance of that kind to be paid to the member.

(3) In subsection (2)—

“determination” means a determination of the Commonwealth Remuneration Tribunal.

### **Acting appointments**

**282E. (1)** Where a member of the Appeals Board, other than the Chairperson, is, or is expected to be, unavailable to perform the duties of his or her office, the Minister may appoint a person to act in that office during the period of unavailability.

**(2)** Where a person has been appointed under subsection (1) the Minister may direct that, for the purposes specified in the direction, the person shall be taken to continue to act in the office after the unavailable member ceases to be unavailable.

**(3)** A direction under subsection (2) shall specify the period during which the person is to be taken to continue to act in the office.

**(4)** The period specified under subsection (3) may be specified by reference to the happening of a particular event or the existence of particular circumstances.

**(5)** A direction under subsection (2)—

- (a) shall be given only if there is a pending review or other special circumstance justifying the giving of the direction; and
- (b) may only be given before the unavailable member ceases to be unavailable.

**(6)** A person continuing to act under a direction under subsection (2) shall not continue to act for more than 12 months after the unavailable member ceases to be unavailable.

**(7)** Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

### **Deputy Chairperson to act for Chairperson**

**282F. (1)** The Deputy Chairperson has and may exercise the powers, and shall perform the functions and duties of the Chairperson—

- (a) during any vacancy in the office of the Chairperson; and

- (b) during any period when the Chairperson is unavailable to perform the duties of his or her office.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that the occasion for the person to act had not arisen or had ceased.

### **Delegation**

**282G.** The Chairperson may, by signed instrument, delegate to a member all or any of his or her powers or functions under this Act.

### **Leave of absence**

**282H.** The Minister may grant leave of absence to a member on such terms and conditions as to remuneration or otherwise as the Minister determines.

### **Other terms and conditions**

**282I.** A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.

### **Resignation**

**282J.** A member may resign from office by written notice delivered to the Minister.

### **Removal from office**

**282K. (1)** The Executive may remove a member from office on an address requesting his or her removal on the ground of proved misbehaviour or incapacity being presented to the Executive by the Legislative Assembly.

(2) The Executive may suspend a member from office on the ground of misbehaviour or incapacity.

(3) Where the Executive suspends a member from office, the Minister shall cause a statement of the ground of the suspension to be laid before the Legislative Assembly within 7 sitting days of the Legislative Assembly after the suspension.

(4) Where such a statement has been laid before the Legislative Assembly, the Legislative Assembly may, within 15 sitting days of the Legislative Assembly after the day on which the statement has been laid before it, by resolution, declare that the member should be removed from office and, if such a resolution is passed, the Executive shall remove the member from office.

(5) If, at the end of 15 sitting days of the Legislative Assembly after the day on which the statement has been laid before it, the Legislative Assembly has not passed such a resolution, the suspension terminates.

(6) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

(7) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Executive shall remove the member from office.

(8) A member shall not be removed or suspended from office except as provided by this section.

#### **Disclosure of interests**

**282L.** (1) Where a member is, or is to be, a member of the Appeals Board as constituted for the purposes of a proceeding and the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that proceeding—

- (a) the member shall disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all the parties to the proceeding, the member shall not take part in the proceeding or exercise any powers in relation to the review by the Appeals Board of the decision to which the proceeding relates.

(2) Where the Chairperson becomes aware that a member is, or is to be, a member of the Appeals Board as constituted for the purposes of a proceeding and that the member has in relation to that proceeding an interest of the kind referred to in subsection (1)—

- (a) if the Chairperson considers that the member should not take part, or should not continue to take part, in the proceedings—the Chairperson shall give a direction to the member accordingly; or
- (b) in any other case—the Chairperson shall cause the interest of the member to be disclosed to the parties to the proceeding.

***Division 3—Organisation of Appeals Board*****Arrangement of business**

**282M. (1)** The Chairperson may give directions as to the arrangement of the business of the Appeals Board and as to the persons who are to constitute the Appeals Board for particular proceedings.

**(2)** Where the Chairperson gives a direction as to the persons who are to constitute the Appeals Board for a particular proceeding, the Chairperson may—

- (a) at any time after giving the direction and before the commencement of the hearing of the proceeding; or
- (b) if 1 of the persons who are to constitute the Appeals Board ceases to be a member or ceases to be available before the matter to which the proceeding relates is determined—at any time after the member so ceases to be a member or to be available;

revoke the direction and give a further direction under subsection (1) as to the persons who are to constitute the Appeals Board for the purposes of the proceeding.

**Constitution of Appeals Board**

**282N.** The Appeals Board shall, for the purposes of the exercise of its powers in relation to a matter, be constituted by 3 members, one of whom shall be the Chairperson or the Deputy Chairperson.

**Member presiding**

**282P. (1)** At the hearing of a proceeding before the Appeals Board at which the Chairperson is one of the members constituting the Appeals Board he or she shall preside.

**(2)** At the hearing of a proceeding before the Appeals Board at which the Chairperson is not one of the members constituting the Board the Deputy Chairperson shall preside.

**Member of Appeals Board ceasing to be available**

**282Q. (1)** Where the hearing of any proceeding has been commenced or completed by the Appeals Board but before the matter to which the proceeding relates has been determined, 1 or more of the members constituting the Board for the purposes of the proceeding (not being or including the presiding



member) has ceased to be a member or has ceased to be available for the purposes of the proceeding—

- (a) if the parties agree and the Chairperson does not give a direction under section 282M reconstituting the Appeals Board for the purposes of the proceeding—the hearing and determination, or the determination, of the proceeding may be completed by the Appeals Board constituted by the remaining member or members; or
- (b) in any other case—the proceeding shall be reheard by the Appeals Board as reconstituted in accordance with the directions of the Chairperson under section 282M.

(2) Where the hearing of any proceeding has been commenced or completed by the Appeals Board but before the matter to which the proceeding relates has been completed, the presiding member of the Board for the purposes of the proceeding has ceased to be a member or has ceased to be available for the purposes of the proceeding, the proceeding shall be reheard by the Appeals Board reconstituted in accordance with the directions of the Chairperson under section 282M.

(3) Where a proceeding is reheard by the Appeals Board, the Board may, for the purposes of that proceeding, have regard to any record of the proceeding before the Board as previously constituted, including a record of any evidence taken in the proceeding.

### **Places of sitting**

**282R.** Sittings of the Appeals Board shall be held from time to time as required at such places as the Chairperson determines.

### ***Division 4—Reviews by the Appeals Board of decisions***

#### **Reviewable decisions**

**282S. (1)** Provision may be made by an enactment (including this Act) for applications to be made to the Appeals Board—

- (a) for review of decisions made in the exercise of powers conferred by that enactment; or
- (b) for the review of decisions made in the exercise of powers conferred, or that may be conferred, by another enactment having effect under that enactment.

(2) Where an enactment makes provision in accordance with subsection (1), that enactment—

- (a) shall specify the person to whose decisions the provision applies;
- (b) may be expressed to apply to all decisions of a person, or to specified decisions of that person; and
- (c) may specify conditions subject to which applications may be made.

(3) Where an enactment makes provision in accordance with this section for the making of applications to the Appeals Board for the review of decisions of a person made in the exercise of a power conferred on that person, that provision also applies to decisions made in the exercise of that power—

- (a) by any person to whom that power has been delegated;
- (b) if the provision specifies the person by reference to his or her being the holder of a particular office or appointment—by any person for the time being acting in, or performing any of the duties of, that office or appointment; or
- (c) by any other person lawfully authorised to exercise that power.

(4) The Appeals Board has power to review any decision in respect of which application is made to it under any enactment.

(5) For the purposes of an enactment that makes provision in accordance with this section for the making of applications to the Appeals Board for review of decisions, a failure by a person to do an act or thing within the period prescribed by that enactment, or by another enactment having effect under that enactment, as the period within which that person is required or permitted to do that act or thing shall be taken to be the making of a decision by that person at the end of that period not to do that act or thing.

(6) Where an enactment provides for applications to the Appeals Board, that enactment may also include provisions adding to, excluding or modifying the operation of any of the provisions of section 282T or 282V in relation to such applications, and those provisions have effect subject to any provisions so included.

(7) Where—

- (a) a person has made a decision in respect of which an application may be made to the Appeals Board;
- (b) the person made the decision because of holding, or performing the duties of, an office or appointment; and
- (c) the person no longer holds that office or performs those duties;

this Part has effect as if the decision had been made by—

- (d) the person for the time being holding or performing the duties of that office or appointment; or
- (e) if there is no person for the time being holding or performing the duties of that office or appointment or the office no longer exists—such person as the Chairperson, or another member authorised by the Chairperson, specifies.

### **Persons who may apply to Appeals Board**

**282T. (1)** Where an application may be made to the Appeals Board for a review of a decision, the application may be made by or on behalf of any person (including the Territory, the Commonwealth, a Territory authority or a Commonwealth authority) whose interests are affected by the decision.

**(2)** An organisation or association of persons, whether incorporated or not, shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organisation or association.

**(3)** Subsection (2) does not apply in relation to a decision given before the organisation or association was formed or before the objects or purposes of the organisation or association included the matter concerned.

**(4)** In this section—

“Commonwealth authority” means a body, whether corporate or not, established by or under a law of the Commonwealth;

“person” includes an unincorporated association;

“Territory authority” means a body, whether corporate or not, established by or under an enactment.

### **Manner of applying for review**

**282U. (1)** An application to the Appeals Board for a review of a decision shall—

- (a) be in a form made available by the Registrar;
- (b) set out a statement of the reasons for the application;
- (c) be lodged with the Registrar within 28 days after the day on which the decision was made; and

(d) be accompanied by the determined fee.

(2) The Appeals Board may, upon application in writing by a person, extend the time for the making by that person of an application to the Board for a review of a decision.

(3) The time for making an application to the Appeals Board for a review of a decision may be extended under subsection (2) although that time has expired.

(4) Before determining an application for an extension of time, the Appeals Board may, if it thinks fit, require the applicant to serve notice of the application on a specified person, being a person whom the Board considers to be affected by the application.

(5) If a person on whom a notice is served under subsection (4), within 14 days after the notice is received by him or her, gives notice in writing to the Appeals Board stating that he or she wishes to oppose the application, the Board shall not determine the application except after a hearing at which the applicant and any person who so gave notice to the Board are given a reasonable opportunity of presenting their cases.

(6) The Registrar shall cause notice in writing of an application for a review of a decision to be given to the person who made the decision.

### **Parties to proceedings before Appeals Board**

**282V.** The parties to a proceeding before the Appeals Board for a review of a decision are—

- (a) any person who, being entitled to do so, has duly applied to the Appeals Board for a review of the decision; and
- (b) the person who made the decision.

### **Representation before Appeals Board**

**282W. (1)** At the hearing of a proceeding before the Appeals Board a party to the proceeding may appear in person and may, with the written consent of the Chairperson, be represented by another person.

(2) The Chairperson shall not consent to a party to a proceeding before the Appeals Board being represented by another person at the hearing of the proceeding unless the Chairperson is satisfied that it is in the interests of the party to be so represented.

(3) Without limiting the generality of subsection (2), the Chairperson may consent to a party to a proceeding before the Appeals Board being represented by another person at the hearing of the proceeding where it would be in the interests of the party to be so represented by reason of—

- (a) the complexity of the matter to which the proceeding relates;
- (b) the age or state of health of the party; or
- (c) a lack of command by the party of the English language.

### **Procedure of Appeals Board**

**282X. (1)** In a proceeding before the Appeals Board—

- (a) the procedure of the Board is, subject to this Act and the regulations and to any other enactment, within the discretion of the Board;
- (b) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant enactment and a proper consideration of the matters before the Board permit; and
- (c) the Board is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

(2) For the purposes of subsection (1), directions as to the procedure to be followed in connection with the hearing of a proceeding before the Appeals Board may be given—

- (a) where the hearing of the proceeding has not commenced—by the Chairperson or by a member authorised by the Chairperson to give directions for the purposes of this paragraph; or
- (b) where the hearing of the proceeding has commenced—by the member presiding at the hearing or by any other member authorised by the member presiding to give such directions.

(3) A direction as to the procedure to be followed in connection with the hearing of a proceeding before the Appeals Board may be varied or revoked at any time by any member empowered under this section to give such a direction in relation to the proceeding at that time.

(4) An authorisation by the Chairperson under this section to give directions as to the procedure to be followed in connection with the hearing of a proceeding may be of general application or may relate to the hearing of a particular proceeding.

(5) The Chairperson may at any time vary or revoke an authorisation under this section.

### **Conferences**

**282Y. (1)** Where an application is made to the Appeals Board for a review of a decision, the Chairperson may, if he or she thinks it desirable to do so after consideration of any material that has been lodged by the parties, direct the holding of a conference of the parties or their representatives presided over by the Chairperson or another member of the Board.

(2) Where a conference is held under subsection (1) and—

- (a) at or after the conference, agreement is reached between the parties or their representatives as to the terms of a decision of the Appeals Board in the proceeding that would be acceptable to the parties;
- (b) the terms of the agreement are put in writing, signed by or on behalf of the parties and lodged with the Board; and
- (c) the Board is satisfied that a decision in those terms would be within the powers of the Board;

the Board shall, without holding a hearing, make a decision in accordance with those terms.

(3) At the hearing of a proceeding before the Appeals Board, unless the parties otherwise agree, evidence shall not be given, and statements shall not be made, concerning any words spoken or act done at a conference held under subsection (1) if the words spoken or act done related to any question to be determined by the Board in the proceeding.

(4) If—

- (a) a conference is held under subsection (1) in respect of a proceeding; and
- (b) a party to the proceeding who, or a representative of whom, was present at the conference notifies the Appeals Board before the commencement of the hearing that he or she objects to that member participating in the hearing;

that member is not entitled to be a member of the Board as constituted for the purposes of the proceeding.

### **Hearings to be in public**

**282Z.** The hearing of a proceeding before the Appeals Board shall be in public.

### **Lodging of material documents with Appeals Board**

**282ZA. (1)** A person who has made a decision that is the subject of an application for a review by the Appeals Board shall, within 5 working days after receiving notice of the application, lodge with the Board—

- (a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and
- (b) a copy of every other document or part of a document that is in his or her possession or under his or her control and is considered by him or her to be relevant to the review of the decision by the Board.

**(2)** Where the Appeals Board is of the opinion that particular other documents may be relevant to the review of the decision by the Board, the Board may cause to be served on the person a notice in writing stating that the Board is of that opinion and requiring the person to lodge with the Board, within a time specified in the notice, a copy of each of those other documents that is in his or her possession or under his or her control, and a person on whom such a notice is served shall comply with the notice.

**(3)** This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents.

### **Power of Appeals Board to obtain additional statements**

**282ZB.** Where the Appeals Board considers that a statement referred to in paragraph 282ZA (1) (a) that is lodged by a person with the Board does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for a decision, the Board may order that person to lodge with the Board, within a time specified in the order, an additional statement containing further and better particulars in relation to matters specified in the order with respect to those findings, that evidence or other material or those reasons.

### **Opportunity to make submissions**

**282ZC.** The Appeals Board shall ensure that every party to a proceeding before the Board is given a reasonable opportunity to present a case and, in particular, to inspect any documents to which the Board proposes to have

regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

### **Powers of Appeals Board**

**282ZD.** (1) For the purpose of reviewing a decision, the Appeals Board may—

- (a) proceed in the absence of a party who has had reasonable notice of the proceeding; and
- (b) adjourn the proceeding from time to time.

(2) For the purposes of the hearing of a proceeding before the Appeals Board, the Registrar shall, if directed to do so by the Chairperson, or by another member of the Board who is to preside, or presides, at the hearing, summon a person to appear before the Board at that hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(3) A summons shall not be issued under subsection (2) in relation to proceedings unless—

- (a) special circumstances exist that would result in a party to the proceedings being seriously disadvantaged if the summons were not issued; and
- (b) there is no practical alternative to issuing the summons in order to obtain the evidence or documents sought.

### **Operation and implementation of a decision that is subject to review**

**282ZE.** (1) Subject to this section, the making of an application to the Appeals Board for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) The Appeals Board or the Chairperson may, on request being made by a party to a proceeding before the Board (in this section called the “current proceeding”), if the Board or the Chairperson is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, make such order staying or otherwise affecting the operation or implementation of the decision to which the current proceeding relates or a part of that decision as the Board or the Chairperson considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review.

(3) Where an order is in force under subsection (2) (including an order that has been varied under this subsection), the Appeals Board or the Chairperson



may, on request being made by a party to the current proceeding, make an order varying or revoking the first-mentioned order.

**(4)** Subject to subsection (5), the Appeals Board or the Chairperson shall not—

- (a) make an order under subsection (2) unless the person who made the decision to which the current proceeding relates has been given a reasonable opportunity to make a submission to the Board or the Chairperson, as the case may be, in relation to the matter; or
- (b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied under subsection (3)) unless—
  - (i) the person who made the decision to which the current proceeding relates;
  - (ii) the person who requested the making of the order under subsection (2); and
  - (iii) if the order under subsection (2) has been varied by an order under subsection (3)—the person or persons who requested the making of the last-mentioned order;

have been given a reasonable opportunity to make submissions to the Board or the Chairperson, as the case may be, in relation to the matter.

**(5)** Subsection (4) does not prohibit the Appeals Board or the Chairperson from making an order without giving to a person referred to in that subsection a reasonable opportunity to make a submission to the Board or the Chairperson in relation to a matter if the Board or the Chairperson is satisfied that, because of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the relevant proceeding relates, the order does not come into operation until a notice setting out the terms of the order is served on that person.

**(6)** An order in force under subsection (2) (including an order that has been varied under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until—
  - (i) where a period for the operation of the order is specified in the order—the end of that period or, if the application for review is

decided by the Appeals Board before the end of that period, the decision of the Board on the application for review comes into operation; or

- (ii) if no period is so specified—the decision of the Board on the application for review comes into operation.

(7) For the purposes of this section, the Chairperson may authorise another member, either generally or in relation to a particular decision, being a decision in respect of which an application to the Appeals Board for a review has been or may be made, to exercise the powers and perform the functions of the Chairperson under this section and, where a member is so authorised, a reference in this section (other than this subsection) to the Chairperson includes a reference to that member.

(8) The Chairperson may at any time vary or revoke an authorisation under subsection (7).

#### **Power of Appeals Board to dismiss application or strike out party**

**282ZF.** (1) Where all the parties to an application before the Appeals Board for a review of a decision consent, the Board may dismiss the application without proceeding to review the decision or, if the Board has commenced to review the decision, without completing the review.

(2) If a party to a proceeding before the Appeals Board in respect of an application for the review of a decision (not being the person who made the decision) fails either to appear in person or to appear by a permitted representative at a preliminary conference held in relation to the application under section 282Y or at the hearing of the proceeding, the Board may—

- (a) where the only other party to the proceeding is the person who made the decision—dismiss the application without proceeding to review the decision; or
- (b) in any other case—direct that the person who failed to appear shall cease to be a party to the proceeding.

(3) The Appeals Board shall not exercise its powers under subsection (2) in relation to a proceeding unless it has considered any submissions made to it by a party to the proceeding in relation to the exercise of those powers.

(4) The Appeals Board is not required to seek submissions in relation to any exercise of its powers under subsection (3).

### **Review by Appeals Board**

**282ZG. (1)** For the purpose of reviewing a decision, the Appeals Board may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision and shall make a decision in writing—

- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and—
  - (i) making a decision in substitution for the decision so set aside; or
  - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Board.

**(2)** The Appeals Board shall endeavour to give its decision in a proceeding within 5 days after the completion of the hearing.

**(3)** The Appeals Board may give its decision in a proceeding either orally or in writing.

**(4)** Where the Appeals Board gives its decision in a proceeding orally it shall, as soon as practicable thereafter give its decision in writing.

**(5)** Where the Appeals Board gives its decision in a proceeding in writing it shall give its reasons for its decision including its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

**(6)** The Appeals Board shall cause a copy of its decision to be given to each party to the proceeding.

**(7)** Without prejudice to any other method available by law for the proof of decisions or orders of the Appeals Board, a document purporting to be a copy of such a decision or order, and to be certified by the Registrar to be a true copy of the decision or order, is, in any proceeding, *prima facie* evidence of the decision or order.

**(8)** Subsections (6) and (7) apply to reasons given in writing by the Appeals Board for its decision in the same manner as they apply to the decision.

**(9)** Subject to subsection (10), a decision of the Appeals Board comes into operation upon the giving of the decision.

(10) The Appeals Board may specify in a decision that the decision is not to come into operation until a later day specified in the decision and, where a later day is so specified, the decision comes into operation on that day.

(11) A decision of a person as varied by the Appeals Board, or a decision made by the Board in substitution for the decision of a person, shall, for all purposes (other than the purposes of applications to the Board for a review or of appeals in accordance with section 282ZI), be taken to be a decision of that person and, upon the commencement of the decision of the Board, unless the Board otherwise orders, has effect, or shall be taken to have had effect, from the day on which the decision under review has or had effect.

### **Return of documents etc. at completion of proceeding**

**282ZH.** (1) Where—

- (a) a proceeding before the Appeals Board has concluded; and
- (b) the time within which an appeal from the decision of the Board in the proceeding may be instituted, or, if that time has been extended, the period of the extension, has expired but no such appeal has been instituted;

the Chairperson may cause a document or any other object furnished to the Board for the purposes of the proceeding to be returned to the person by whom it was furnished.

(2) Where the Supreme Court causes a document or object sent to that Court in accordance with paragraph 282ZL in connection with a proceeding before that Court to be returned to the Appeals Board, the Chairperson may cause the document or object to be returned to the person by whom it was furnished to the Board.

### **Appeals to Supreme Court from decisions of the Appeals Board**

**282ZI.** (1) A party to a proceeding before the Appeals Board may appeal to the Supreme Court on a question of law from any decision of the Board in that proceeding.

(2) Where a person has applied to the Appeals Board for a review of a decision, or has applied to be made a party to a proceeding for a review of a decision, and the Board decides that the person is not entitled to apply for the review or to be made a party, as the case may be, the person may appeal to the Supreme Court from the decision of the Board.

(3) An appeal by a person under subsection (1) or (2) shall be instituted—

- (a) not later than the 28th day after the day on which a document setting out the terms of the decision of the Appeals Board is given to the person or within such further time as the Supreme Court (whether before or after the end of that day) allows; and
- (b) in such manner as is prescribed by Rules of Court made under the *Supreme Court Act 1933*.

(4) The Supreme Court has jurisdiction to hear and determine appeals instituted in that Court in accordance with subsection (1) or (2).

(5) The Supreme Court shall hear and determine the appeal and may make on the appeal—

- (a) an order affirming or setting aside the decision of the Appeals Board;
- (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the Board in accordance with the directions of the Court; or
- (c) such other order as the Court, in its discretion, thinks appropriate having regard to its decision.

### **Operation and implementation of a decision that is subject to appeal**

**282ZJ.** (1) Subject to this section, the institution of an appeal to the Supreme Court from a decision of the Appeals Board does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) Where an appeal is instituted in the Supreme Court from a decision of the Appeals Board, the Court or a Judge of the Court sitting in chambers may make such order staying or otherwise affecting the operation or implementation of either or both of the following:

- (a) the decision of the Board or a part of that decision;
- (b) the decision to which the proceeding before the Board related or a part of that decision;

as the Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) Where an order is in force under subsection (2) (including an order that has been varied under this subsection), the Supreme Court or a Judge of the Court sitting in chambers may make an order varying or revoking the first-mentioned order.

(4) An order in force under subsection (2) (including an order that has been varied under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until—
  - (i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
  - (ii) if no period is so specified—the giving of a decision on the appeal.

#### **Reference of questions of law to Supreme Court**

**282ZK.** (1) The Appeals Board may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before the Board to the Supreme Court for decision but a question shall not be so referred without the concurrence of the Chairperson.

(2) The Supreme Court has jurisdiction to hear and determine a question of law referred to it under this section.

(3) Where a question of law arising in any proceeding has been referred to the Supreme Court under this section, the Appeals Board shall not, in that proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Supreme Court on the question.

#### **Sending of documents to, and disclosure of documents by, the Supreme Court**

**282ZL.** When an appeal is instituted in the Supreme Court in accordance with section 282ZI or a question of law is referred to the Court in accordance with section 282ZK—

- (a) the Appeals Board shall cause to be sent to the Court all documents or objects that were before the Board in connection with the proceeding to which the appeal or reference relates; and

- (b) at the conclusion of the proceeding before the Supreme Court in relation to the appeal or reference, the Court shall cause the documents or objects to be returned to the Board.

***Division 5—Miscellaneous***

**Protection of members, representatives and witnesses**

**282ZM.** (1) A member has, in the performance of duties as a member, the same protection and immunity as a Judge of the Supreme Court.

(2) A person appearing before the Appeals Board on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

(3) Subject to this Part, a person summoned to attend or appearing before the Appeals Board as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

**Failure of witness to attend**

**282ZN.** A person served with a summons under this Part that requires the person to appear as a witness before the Appeals Board shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by a member.

Penalty: \$1,000 or imprisonment for 3 months.

**Refusal to answer questions**

**282ZP.** A person appearing as a witness before the Appeals Board shall not, without reasonable excuse—

- (a) refuse or fail to answer a question that the person is required to answer by the member presiding at the proceeding; or
- (b) refuse or fail to produce a document that the person was required to produce by a summons under this Part.

Penalty: \$1,000 or imprisonment for 3 months.

**False or misleading evidence**

**282ZQ.** A person appearing as a witness before the Appeals Board shall not give evidence that, to the person's knowledge, is false or misleading.

Penalty: \$1,000 or imprisonment for 3 months.

**Contempt of Appeals Board**

**282ZR.** A person shall not—

- (a) obstruct or hinder the Appeals Board or a member in the performance of the functions of the Board; or
- (b) disrupt proceedings of the Board.

Penalty: \$1,000 or imprisonment for 3 months.

**Registry**

**282ZS.** The Minister shall cause a Registry of the Appeals Board to be established.

**Registrar**

**282ZT. (1)** There shall be a Registrar of the Appeals Board who shall be appointed by the Minister.

**(2)** The Registrar shall have such duties, powers and functions as are provided by this Act and the regulations and such other duties and functions as the Chairperson directs.

**(3)** The Registrar shall be a public servant.

**(4)** Where the Registrar is, or is expected to be, absent from duty, or the office of the Registrar is vacant, the Minister may appoint a public servant to act as the Registrar of the Appeals Board during the absence or until the filling of the vacancy, as the case may be.

**Giving of notices**

**282ZU. (1)** A notice that is required or permitted by this Part to be served on or given to the person who made a decision may be served on or given to the Secretary to the Department of the Environment, Land and Planning.

**(2)** The Secretary to the Department of the Environment, Land and Planning shall give a copy of each nomination made under subsection (1) to the Registrar.



### **Lodging of documents**

**282ZV.** Where a document is required by this Act to be lodged with the Appeals Board the document shall be lodged at the Registry.

## **PART VII—MISCELLANEOUS**

### **Persons authorised to exercise powers of the Executive**

**283. (1)** Subject to subsection (3), the Executive may, by instrument, authorise a person to act on its behalf in the exercise of a power in accordance with Part II or V.

**(2)** Where the exercise of a power by the Executive in accordance with this Part is dependent upon the opinion, belief or state of mind of the Executive in relation to a matter and a person has, pursuant to subsection (1), been authorised to exercise that power, the power may be exercised by the person so authorised upon his or her opinion, belief or state of mind in relation to the matter.

**(3)** Subsection (1) does not apply in respect of the exercise of a power of the Executive under subsection 163 (4), 164 (3), 167 (1) or 178 (3).

### **Power of Appeals Board, Administrative Appeals Tribunal and Supreme Court**

**284.** Where a person appeals, or purports to appeal, under this Act—

- (a) to the Appeals Board;
- (b) to the Administrative Appeals Tribunal; or
- (c) against a determination or decision of the Appeals Board, or the Administrative Appeals Tribunal, to the Supreme Court;

and it appears to the Board, the Tribunal or the Court, as the case may be—

- (d) that the appeal, or purported appeal, or the decision, or the purported decision, against which the appeal, or purported appeal, has been brought is affected by a failure to comply with a requirement of this Act; and
- (e) that to exercise the powers conferred by this section would not be unjust or inequitable;

the Board, Tribunal or Court may excuse the failure by ordering that, subject to such conditions as may be specified in the order by the Board, Tribunal or Court, the requirement concerned be dispensed with to the necessary extent.

**Corporations—penalties**

**285.** Except where otherwise expressly provided, a body corporate is convicted of an offence against this Act or the regulations, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

**Conduct of directors, servants and agents**

**286. (1)** Where, for the purposes of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

**(2)** A reference in subsection (1) to the state of mind of a body or person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

**(3)** Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also 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.

**(4)** Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

**(5)** A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for

a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

**Power of Minister to determine fees**

287. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

**Regulations**

288. The Executive may make regulations, not inconsistent with this Act, prescribing—

- (a) matters required or permitted by this Act to be prescribed;
- (b) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act; or
- (c) penalties, for offences against the regulations, not exceeding—
  - (i) if the offender is a natural person—a fine of \$1,000; or
  - (ii) if the offender is a body corporate—a fine of \$5,000.

**SCHEDULE 1**

Section 195

**MANAGEMENT OBJECTIVES FOR PUBLIC LAND**

Reserve	Management objectives
Wilderness area	<ol style="list-style-type: none"> <li>1. To conserve the natural environment in a manner ensuring that disturbance to that environment is minimal.</li> <li>2. To provide for the use of the area (other than by vehicles or other mechanised equipment) for recreation by limited numbers of people, so as to ensure that opportunities for solitude are provided.</li> </ol>
National park	<ol style="list-style-type: none"> <li>1. To conserve the natural environment.</li> <li>2. To provide for public use of the area for recreation, education and research.</li> </ol>
Nature reserve	<ol style="list-style-type: none"> <li>1. To conserve the natural environment.</li> <li>2. To provide for public use of the area for recreation, education and research.</li> </ol>
Special purpose reserve	<ol style="list-style-type: none"> <li>1. To provide for public and community use of the area for recreation and education.</li> </ol>
Cemetery or burial ground	<ol style="list-style-type: none"> <li>1. To provide for the burial of the dead and the storage of the ashes of the dead.</li> <li>2. To conserve the natural environment.</li> </ol>
Sport and recreation reserve	<ol style="list-style-type: none"> <li>1. To provide for public and community use of the area for sport and recreation.</li> </ol>
Urban open space	<ol style="list-style-type: none"> <li>1. To provide for public and community use of the area.</li> <li>2. To develop the area for public and community use.</li> </ol>
Lake	<ol style="list-style-type: none"> <li>1. To prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs.</li> <li>2. To prevent and control pollution of waterways.</li> </ol>

**SCHEDULE 2**—continued

Column 1 Item	Column 2 Controlled activity	Column 3 Concurring authority	Column 4 Penalty
Reserve		Management objectives	
		3. To provide for public use of the lake for recreation.	
		4. To provide a habitat for fauna and flora.	

**SCHEDULE 2**

Section 56

**CRITERIA FOR THE ASSESSMENT OF THE HERITAGE SIGNIFICANCE OF PLACES**

1. Under section 56 of the *Land (Planning and Environment) Act 1991* the criteria for the assessment of the heritage significance of places are:
    - (i) a place which demonstrates a high degree of technical and/or creative achievement, by showing qualities of innovation or departure or representing a new achievement of its time;
    - (ii) a place which exhibits outstanding design or aesthetic qualities valued by the community or a cultural group;
    - (iii) a place which demonstrates a distinctive way of life, taste, tradition, religion, land use, custom, process, design or function which is no longer practised, is in danger or being lost, or is of exceptional interest;
    - (iv) a place which is highly valued by the community or a cultural group for reasons of strong or special religious, spiritual, cultural, educational or social associations;
    - (v) a place which is the only known or only comparatively intact example of its type;
    - (vi) a place which is a notable example of a class of natural or cultural places or landscapes and which demonstrates the principal characteristics of that class;
    - (vii) a place which has strong or special associations with person, group, event, development or cultural phase which played a significant part in local or national history;
    - (viii) a place which represents the evolution of a natural landscape, including significant geological features, landforms, biota or natural processes;
    - (ix) a place which is a significant habitat or locality for the life cycle of native species; for rare, endangered or uncommon species; for species at the limits of their natural range; or for distinct occurrences of species;
    - (x) a place which exhibits unusual richness, diversity or significant transitions of flora, fauna or natural landscapes and their elements; or
    - (xi) a place which demonstrates a likelihood of providing information which will contribute significantly to a wider understanding of natural or cultural history, by virtue of its use as a research site, teaching site, type locality or benchmark site.
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### SCHEDULE 3

Section 115

#### CONTENT OF PRELIMINARY ASSESSMENTS

1. The following format is to be used for a preliminary assessment required under section 115.
  1. **GENERAL INFORMATION**
    - 1.1 **Name and Address of Proponent.** This is to include the details of any ACT government authority or agency.
    - 1.2 **Details of the Contact.** This is to include the contact officer within any ACT government authority or agency.
    - 1.3 **Status of the Project.** Advise the current position on the planning of the project, studies commenced or planned and the proposed targets for planning, development or construction.
    - 1.4 **Location of the Project.**
      - (a) project site description sufficient for precise location on a map or a map included to show the exact site location.
      - (b) information on possible future extensions.
    - 1.5 **Description of the Project.**
      - (a) the type and form of the project including supporting developments including those not the responsibility of the proponent;
      - (b) the purpose and need for the project, intended utilisation and operation of the facilities;
      - (c) the relationship of the project with surrounding development, to connected facilities and services or to other proposed projects.
  2. **EXISTING ENVIRONMENTAL CONDITIONS**
    - 2.1 **Description of Project Site.** A brief description of the overall appearance and current land use with mention made of any special features including the built and natural heritage factors, if any of the site.
    - 2.2 **Description of Region Surrounding the Project Site.** Significant differences between the site and surrounding areas should be noted—eg. variation in population density, watershed, proximity to watercourses and water bodies.
    - 2.3 **Current Land Use Policy and Lease Conditions of the Site.**
  3. **POTENTIAL IMPACT OF THE PROJECT ON THE ENVIRONMENT.**
    - 3.1 **On the Physical Environment.**
    - 3.2 **On the Human Environment.**
    - 3.3 **On the Non-human Biological Environment**
    - 3.4 **Potentially Beneficial Impacts.**
  4. **SUMMARY AND CONCLUSIONS**
    - 4.1 A summary of the potential benefits and disadvantages of the project. Can the benefits to the community be said to offset any unavoidable permanent or temporary adverse effects?

**SCHEDULE 4**Sections 4, 222, 223,  
225, 230, 235, 240, 241,  
247, 250-252 and 254**CONTROLLED ACTIVITIES: CONCURRING AUTHORITIES:  
PENALTIES**

Column 1 Item	Column 2 Controlled activity	Column 3 Concurring authority	Column 4 Penalty
1	Work affecting the requirements for the conservation of the heritage significance of places included in the Heritage Places Register or an interim Heritage Places Register	The Planning Authority and the Conservator	\$20,000
2	The execution of a variation of a lease of Territory Land	The Minister and the Planning Authority	\$1,000
3	The execution of a new lease for the purpose of effecting the subdivision or consolidation of Territory Land	The Minister and the Planning Authority	\$1,000
4	Subject to the Plan, the use of residential land for carrying on a profession, trade, occupation or calling on the land	The Minister and the Planning Authority	\$5,000
5	An activity specified pursuant to paragraph 7 (3) (c) to be a controlled activity for the purposes of this Act	The authority specified in the Plan whose permission is required	\$5,000
6	Encroachment onto, over or under public land within the meaning of Part V, or a public road within the meaning of that Part	The Minister, the Planning Authority and the Conservator	\$5,000
7	Mining	The Minister and the Planning Authority	\$5,000



**SCHEDULE 5**

Sections 4, 224 and 255

**ACTIVITIES SUBJECT TO ORDERS**

Column 1	Column 2	Column 3
Item	Activities	Penalty
1	Work affecting the requirements for the conservation of the heritage significance of places included in the Heritage Places Register or an interim Heritage Places Register conducted otherwise than in accordance with an approval	\$20,000
2	Using residential land for the carrying on of a profession, trade, occupation or calling otherwise than in accordance with an approval, or the Plan	\$5,000
3	Using land otherwise than in accordance with— (a) the lease; or (b) if the lease is granted subject to the lessee entering into a development agreement and the lessee has entered into that agreement—the development agreement	\$5,000
4	Failure to keep a leasehold clean	\$5,000
5	Activities specified pursuant to paragraph 7 (3) (c) conducted otherwise than in accordance with an approval	\$5,000
6	Encroachment onto, over or under public land otherwise than in accordance with an approval	\$5,000
7	Mining otherwise than in accordance with an approval	\$20,000
9	Permitting a tree, sapling, plant or shrub to overhang a public place so as to obstruct or inconvenience a person in that place	\$500

**NOTE**

1. The *Land (Planning and Environment) Act 1991* as shown in this reprint comprises Act No. 100, 1991 amended as indicated in the Tables below.

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Land (Planning and Environment) Act 1991</i>	100, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Remainder: 2 Apr 1992	
<i>Land (Planning and Environment) (Amendment) Act 1992</i>	32, 1992	3 July 1992	3 July 1992	S. 5 (2)
<i>Land (Planning and Environment) (Amendment) Act 1993</i>	11, 1993	1 Mar 1993	1 Mar 1993	—
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Registrar-General (Consequential Provisions) Act 1993</i>	64, 1993	6 Sept 1993	Ss. 1 and 2: 6 Sept 1993 Remainder: 1 Oct 1993 (see s. 2 (2) and <i>Gazette</i> 1993, No. S207)	Part III (ss. 6-13)
<i>Land (Planning and Environment) (Amendment) Act (No. 2) 1993</i>	75, 1993	2 Nov 1993	Ss. 1 and 2: 2 Nov 1993 Remainder: 1 Dec 1993 (see <i>Gazette</i> 1993, No. S247. p. 2)	—
<i>Land (Planning and Environment) (Amendment) Act (No. 3) 1993</i>	77, 1993	2 Nov 1993	Ss. 1 and 2: 2 Nov 1993 Remainder: 1 Dec 1993 (see <i>Gazette</i> 1993, No. S243)	—
<i>Real Property (Consequential Provisions) Act 1993</i>	90, 1993	17 Dec 1993	Ss. 1 and 2: 17 Dec 1993 Remainder: 1 Jan 1994 (see s. 2 (2) and <i>Gazette</i> 1993, No. S270)	—

**NOTE—continued****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 3	rep. No. 44, 1993
S. 4	am. Nos. 75 and 77, 1993
S. 8	am. No. 77, 1993
S. 19	am. No. 75, 1993
Ss. 59, 60	am. No. 77, 1993
Ss. 62, 63	am. No. 77, 1993
S. 65	am. No. 77, 1993
S. 69	am. No. 77, 1993
S. 71	am. No. 77, 1993
S. 73	am. No. 77, 1993
S. 80	am. No. 77, 1993
S. 82	am. No. 77, 1993
S. 84	am. No. 77, 1993
S. 86	am. No. 77, 1993
S. 117	am. No. 77, 1993
S. 125	am. No. 77, 1993
S. 158	am. No. 77, 1993
S. 159	am. No. 90, 1993
S. 161	am. No. 11, 1993
Ss. 163-165	am. No. 11, 1993
S. 187	rep. No. 75, 1993
S. 209	am. No. 11, 1993
S. 210	am. No. 32, 1992
S. 212	am. No. 77, 1993
S. 213	rs. No. 77, 1993
Ss. 213A, 213B	ad. No. 77, 1993
S. 216A	ad. No. 11, 1993
S. 229	am. No. 90, 1993
S. 230	am. No. 77, 1993
S. 238	am. No. 77, 1993
S. 242	am. No. 32, 1992; No. 64, 1993
S. 243	am. No. 77, 1993
S. 249	rs. No. 77, 1993
S. 256	am. No. 77, 1993
S. 257	am. Nos. 64 and 77, 1993
Ss. 258, 259	am. No. 77, 1993
S. 260	am. Nos. 64 and 77, 1993
Ss. 275-279	am. No. 77, 1993
S. 280	rs. No. 77, 1993
S. 282	am. No. 32, 1992
Part VIA (ss. 282A-282Z, 282ZA-282ZV)	ad. No. 77, 1993
Ss. 282A-282Z	ad. No. 77, 1993
Ss. 282ZA-282ZV	ad. No. 77, 1993

**NOTE**—continued**Table of Amendments**—continued

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 284 .....	rs. No. 77, 1993
Schedules 4, 5 .....	am. No. 75, 1993

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