



AUSTRALIAN CAPITAL TERRITORY

# **Land (Planning and Environment) (Amendment) Act (No. 2) 1996**

**No. 71 of 1996**

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SCHEDULE

FURTHER AMENDMENTS TO LAND (PLANNING AND ENVIRONMENT)  
ACT 1991



AUSTRALIAN CAPITAL TERRITORY

## **Land (Planning and Environment) (Amendment) Act (No. 2) 1996**

No. 71 of 1996

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### **An Act to amend the *Land (Planning and Environment) Act 1991* and for related purposes**

*[Notified in ACT Gazette S328: 20 December 1996]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **PART I—PRELIMINARY**

##### **Short title**

1. This Act may be cited as the *Land (Planning and Environment) (Amendment) Act (No. 2) 1996*.

##### **Commencement**

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

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

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### **Principal Act**

3. In this Act, “Principal Act” means the *Land (Planning and Environment) Act 1991*.<sup>1</sup>

## **PART II—AMENDMENTS OF PRINCIPAL ACT**

### **Interpretation**

4. Section 4 of the Principal Act is amended by inserting the following definition:

“ ‘Environment Minister’ means the Minister administering Part IV;”.

### **Substitution**

5. Section 80 of the Principal Act is repealed and the following section substituted:

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

“80. (1) Where the Minister decides to grant an applicant compensation, he or she shall notify the applicant within 60 days after receiving the application.

“(2) Notice in accordance with paragraph 282A (1) (b) shall be given within 60 days of receiving the application to which the notice relates.”.

### **Access to restricted information**

6. Section 85 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) Where the Heritage Council publishes restricted information to a person under subsection (1), the Council shall give the person a written statement explaining the effect of the Minister’s declaration that information is restricted information for the purposes of this Act.”.

### **Interpretation**

7. Section 111 of the Principal Act is amended by omitting the definition of “Environment Minister”.

### **Public inspection**

8. Section 117 of the Principal Act is amended by omitting subsections (5) and (6) and substituting the following subsection:

“(5) A notice in accordance with paragraph 282A (4) (a) shall include particulars of the calculation of the amount fixed as the maximum price that the proponent may charge for a copy of the preliminary assessment.”.

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

9. Section 125 of the Principal Act is amended by omitting subsections (5) and (5A) and substituting the following subsection:

“(5) A notice in accordance with paragraph 282A (4) (b) shall include 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.”.

### **Notice of application**

**10.** Section 229 of the Principal Act is amended by inserting after subsection (5) the following subsection:

“(5A) The validity of an approval is not to be taken to be affected by a failure by the applicant to comply with subsection (5).”.

### **Substitution**

**11.** Section 275 of the Principal Act is repealed and the following section substituted:

### **Review of decisions**

“275. (1) Where the Minister makes a decision—

- (a) refusing to approve an application under subsection 228 (2);
- (b) refusing to approve an application under section 230;
- (c) refusing to grant an extension of a period under subsection 233 (3);
- (d) refusing to exclude the identity of an objector under section 239;
- (e) giving an approval subject to conditions under subsection 245 (1);
- (f) refusing to approve an amendment under subsection 245 (4);
- (g) refusing to amend an approval under subsection 247 (2);
- (h) refusing to extend time under subsection 252 (2); or
- (j) revoking an approval under section 253;

the Minister shall cause notice of the decision to be given to a person whose interests are affected by the decision.

“(2) Where the Executive makes a decision refusing to approve an application or approving an application subject to conditions under section 240 or 241, the Executive shall cause notice of the decision to be given to a person whose interests are affected by 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 Minister or specified person or body shall cause notice of the decision to be given to the applicant to whom the decision relates.

“(4) An application may be made to the Administrative Appeals Tribunal for review of a decision referred to in subsection (1), (2) or (3).

“(5) A notice under subsection (1), (2) or (3) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

### **Review—objectors, third parties**

**12.** Section 276 of the Principal Act is amended—

(a) by omitting subsections (1), (2) and (3) and substituting the following subsections:

“(1) Application for a review of—

- (a) a decision of the Minister to approve an application under section 230 or 245; or
- (b) a decision of the Executive to approve an application under section 240 or 241;

may be made by a person to the Administrative Appeals Tribunal within 28 days after the day on which the person was notified of the decision if—

- (c) the person making the application is a person who objected under section 237; or
- (d) the Tribunal 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 be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”;

(b) by omitting from subsection (4) “Appeals Board” and substituting “Administrative Appeals Tribunal”; and

(c) by omitting from subsection (6) “Appeals Board” and “Board” (last occurring) and substituting “Administrative Appeals Tribunal” and “Tribunal” (respectively).

### **Substitution**

**13.** Section 277 of the Principal Act is repealed and the following section substituted:

### **Review—orders**

“277. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister—

- (a) making an order under section 256;
- (b) refusing to make an order under section 256; or
- (c) making an order subject to a direction of a kind referred to in paragraph 256 (5) (b).

“(2) A notice given to a person in accordance with paragraph 257 (1) (a), (b), (c) or (e) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

### **Notification of objectors**

**14.** Section 278 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Where an applicant makes an application under section 275 for the review of a decision referred to in subsection 275 (1) or (2), the Minister shall, as soon as practicable after being notified of the application, give notice that the applicant has so applied to—

- (a) each person who objected under section 237 to the application in relation to which the decision was made; and
  - (b) any concurring authority to whom the application in relation to which the decision was made was referred.”;
- (b) by omitting from subsection (2) “Appeals Board” and substituting “Administrative Appeals Tribunal”.

### **Notification of applicants**

**15.** Section 279 of the Principal Act is amended—

- (a) by omitting from subsection (2) “Appeals Board” and substituting “Administrative Appeals Tribunal”; and
- (b) by omitting from the definition of “objector” in subsection (3) “(d) or (e)” and substituting “(c) or (d)”.

### **Repeal**

**16.** Sections 280 and 281 of the Principal Act are repealed.

## **Substitution**

17. Part VIA of the Principal Act is repealed and the following Part substituted:

### **“PART VIA—ADMINISTRATIVE APPEALS**

#### **Review of decisions**

“282A. (1) Where the Minister makes a decision—

- (a) directing the Heritage Council to notify an interim Heritage Places Register under paragraph 69 (1) (a) or 73 (1) (a);
- (b) refusing to grant compensation under Subdivision D of Division 5 of Part III;
- (c) making a declaration under subsection 82 (1);
- (d) determining the value of improvements under section 174;
- (e) confirming a variation of rent, or setting a variation of rent aside and substituting another variation under subsection 177 (3);
- (f) refusing to authorise the payment of an amount in respect of the surrender or termination of a lease under subsection 178 (1);
- (g) refusing to issue a certificate that a building and development provision of a lease has been fully complied with under subsection 179 (1); or
- (h) refusing to consent to a legal or equitable assignment or transfer of a lease or an interest in a lease under subsection 180 (2);

the Minister shall cause notice of the decision to be given to a person whose interests are affected by the decision.

“(2) Where the Executive makes a decision—

- (a) acquiring a place or object under section 64;
- (b) 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);
- (c) 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;
- (d) terminating the right of a person to the grant of a lease under subsection 170 (1);



- (e) refusing to grant a further lease of Territory Land under section 171 or 172;
- (f) determining the amount payable in respect of the increase in value of a lease that would result from a proposed variation of the lease under section 184;
- (g) terminating a lease under subsection 188 (1);
- (h) terminating a licence under subsection 188 (3);
- (j) refusing to consent to the surrender of a lease or part of the land comprised in a lease under subsection 214 (1), or consenting subject to a condition;
- (k) refusing to grant a person the right to extract minerals from specified Territory Land under subsection 219 (1);

the Executive shall cause notice of the decision to be given to a person whose interests are affected by the decision.

“(3) Where the Heritage Council makes a decision—

- (a) refusing an application for the inclusion of a provision in an interim Heritage Places Register under subsection 59 (3);
- (b) including a provision in an interim Heritage Places Register notified under section 60;
- (c) revising an interim Heritage Places Register under paragraph 62 (1) (b); or
- (d) refusing to grant approval to publish restricted information under subsection 84 (2);

the Heritage Council shall cause notice of the decision to be given to a person whose interests are affected by the decision.

“(4) Where the Environment Minister makes a decision—

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

the Environment Minister shall cause notice of the decision to be given to the proponent.

“(5) An application may be made to the Administrative Appeals Tribunal for review of the following decisions:

- (a) a decision referred to in subsection (1), (2), (3) or (4);
- (b) a decision not to register a place under paragraph 69 (1) (b) or 73 (1) (b).

“(6) A notice under subsection (1), (2), (3) or (4) or paragraph 69 (1) (b) or 73 (1) (b) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

### **Substitution**

**18.** Section 284 of the Principal Act is repealed and the following section substituted:

#### **Power of Administrative Appeals Tribunal and Supreme Court**

“284. Where a person appeals, or purports to appeal, under this Act—

- (a) to the Administrative Appeals Tribunal; or
- (b) against a determination or decision of the Administrative Appeals Tribunal to the Supreme Court;

and it appears to the Tribunal or Court, as the case may be—

- (c) 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
- (d) that to exercise the powers conferred by this section would not be unjust or inequitable;

the Tribunal or Court may order that, subject to any specified conditions, the requirement concerned be dispensed with to the necessary extent.”.

#### **Further amendments to *Land (Planning and Environment) Act 1991***

**19.** The Principal Act is further amended as set out in the Schedule.

### **PART III—CONSEQUENTIAL AMENDMENTS**

#### **Land (Planning and Environment) Regulations**

**20.** Regulation 23 of the Land (Planning and Environment) Regulations is repealed.

### **PART IV—TRANSITIONAL**

#### **Interpretation**

**21.** In this Part—

“Appeals Board” means the Land and Planning Appeals Board established under the Principal Act before the commencement of this Act;

“commencement date” means the day on which section 17 commences.

#### **Certain decisions of Registrar**

**22.** Where—

- (a) the Registrar made an order under section 256 of the Principal Act and the order was still in force immediately before the commencement date; or
- (b) the Registrar refused to make an order under that section and the time for applying for a review of the decision had not expired immediately before the commencement date;

the Minister shall be taken to have made the order or decision.

### **Applications**

**23.** Any application made to the Appeals Board the hearing of which had not commenced immediately before the commencement date shall be taken to have been made to the Administrative Appeals Tribunal.

### **Part-heard proceedings**

**24. (1)** Where, immediately before the commencement date, the Appeals Board had commenced, but not completed, the hearing of a proceeding, the Administrative Appeals Tribunal shall continue hearing the proceeding in the Land and Planning Division of the Tribunal.

**(2)** For the purpose of hearing a proceeding in accordance with subsection (1), and subject to any direction given by the Administrative Appeals Tribunal under section 32 of the *Administrative Appeals Tribunal Act 1989*, the Tribunal may have regard to—

- (a) any record of the proceeding before the Appeals Board, including a record of any evidence taken or submissions made in the proceeding; and
- (b) any document or other thing lodged with the Appeals Board in connection with the proceeding.

### **Conferences**

**25.** A conference held under subsection 282Y (1) of the Principal Act shall be taken to have been held under section 33 of the *Administrative Appeals Tribunal Act 1989*.

### **Actions of Appeals Board**

**26.** Where, immediately before the commencement date, the Appeals Board had—

- (a) made an order or given a direction or ruling in relation to a proceeding that had not been determined; or
- (b) granted an extension of time under subsection 282U (2) of the Principal Act that had not expired;

that order, direction, ruling or extension shall be taken to have been made, given or granted by the Administrative Appeals Tribunal.

### **Production of documents**

**27.** Where, in a proceeding the hearing of which had not been completed immediately before the commencement date—

- (a) the Appeals Board required a person, by summons or otherwise, to produce a document within a specified period; and
- (b) that period expired before the commencement date without the person producing the document;

the Administrative Appeals Tribunal may take any action in relation to the person's failure that it would be able to take had it required the production.

### **Completed hearings where decision not given**

**28. (1)** Notwithstanding the amendments of the Principal Act effected by this Act, the Principal Act as in force immediately before the commencement date continues to apply in relation to any proceeding which the Appeals Board has completely heard but for which no decision has been given until such time as the Appeals Board gives its decision.

**(2)** The *Administrative Appeals Tribunal Act 1989* applies in relation to a decision referred to in subsection (1) as if the decision were a decision of the Administrative Appeals Tribunal.

### **Additional power of Supreme Court**

**29. (1)** Where the Supreme Court hears an appeal from a decision of the Appeals Board, in addition to any other order the Court may make, the Court may make an order remitting the relevant case to be heard and decided again by the Administrative Appeals Tribunal, either with or without the hearing of further evidence, and in accordance with any direction of the Court.

**(2)** For the purposes of a proceeding in accordance with an order under subsection (1), and subject to any direction given by the Administrative Appeals Tribunal under section 32 of the *Administrative Appeals Tribunal Act 1989*, the Tribunal may have regard to—

- (a) any record of the proceeding before the Appeals Board, including a record of any evidence taken or submissions made in the proceeding; and
- (b) any document or other thing lodged with the Appeals Board in connection with the proceeding.

**SCHEDULE**

Section 19

**FURTHER AMENDMENTS TO LAND (PLANNING AND ENVIRONMENT) ACT 1991**

**Section 4 (definitions of “Appeals Board” and “Registrar”)—**

Omit the definitions.

**Section 5 (definition of “background papers”, paragraph (c))—**

Omit “by the Authority of the reasons”, substitute “of reasons by the Authority”.

**Subsections 59 (4) and (5)—**

Omit the subsections.

**Subparagraph 60 (1) (c) (ii)—**

- (a) Omit “Part VIA”, substitute “the *Administrative Appeals Tribunal Act 1989*”.
- (b) Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**Paragraph 62 (3) (c)—**

- (a) Omit “Part VIA”, substitute “the *Administrative Appeals Tribunal Act 1989*”.
- (b) Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**Subsection 63 (2)—**

Omit all the words after “review”, substitute “of a decision referred to in paragraph 282A (1) (a) or 282A (3) (b) in relation to the interim Register”.

**Subsection 63 (3)—**

Omit “under paragraph 86 (2) (a) or (b)”, substitute “of a decision referred to in paragraph 282A (1) (a) or 282A (3) (b)”.

**Paragraph 63 (3) (b)—**

Omit “Appeals Board’s”, substitute “Administrative Appeals Tribunal’s”.

**Subsection 63 (4)—**

Omit “subsection 86 (3)”, substitute “paragraph 282A (5) (a)”.

**Paragraph 63 (4) (b)—**

Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**SCHEDULE—continued**

**Subsection 63 (5)—**

Omit “86 (2) (c)”, substitute “282A (5) (a)”.

**Paragraph 63 (5) (b)—**

Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**Section 65—**

Repeal the section.

**Subsection 69 (6)—**

Omit the subsection.

**Subsection 73 (6)—**

Omit the subsection.

**Section 79—**

Omit “under section 80”, substitute “in accordance with paragraph 282A (1) (b)”.

**Subsection 82 (4)—**

Omit the subsection, substitute the following subsection:

“(4) A copy of a declaration given to a person under paragraph (3) (a) shall be accompanied by a notice in accordance with paragraph 282A (1) (d).”.

**Subsection 84 (4)—**

Omit the subsection.

**Division 6 of Part III—**

Repeal the Division.

**Division 5 of Part IV—**

Repeal the Division.

**Paragraph 210 (3) (d)—**

Omit “one”, substitute “are”.

**Division 6 of Part V—**

Repeal the Division.

**Subsection 230 (5)—**

Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**Section 238—**

Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**SCHEDULE**—continued

**Subsection 243 (1)**—

Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**Subparagraph 243 (3) (c) (ii)**—

Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**Paragraph 249 (b)**—

Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**Paragraph 249 (c)**—

(a) Omit “Appeals Board” (first occurring), substitute “Administrative Appeals Tribunal”.

(b) Omit “Appeals Board” (last occurring), substitute “Tribunal”.

**Subsection 256 (1)**—

Omit “Registrar”, substitute “Minister”.

**Subsection 256 (3)**—

Omit the subsection, substitute the following subsection:

“(3) On receiving an application under subsection (1), the Minister shall give notice in writing of the application to each person against whom an order is sought.”.

**Paragraph 256 (4) (a)**—

Omit “Registrar”, substitute “Minister”.

**Subsection 256 (4A)**—

Omit the subsection, substitute the following subsection:

“(4A) Before deciding whether to make an order the Minister shall consider any submissions made by a person against whom the order is sought.”.

**Subsection 256 (4B)**—

Omit “Registrar”, substitute “Minister”.

**Subsection 256 (4C)**—

Omit the subsection.

**Subsection 256 (6)**—

Omit “Registrar” (wherever occurring), substitute “Minister”.

**Subsection 257 (1)**—

Omit “Registrar” (first and second occurring), substitute “Minister”.

**SCHEDULE**—continued

**Paragraph 257 (1) (e)**—

Omit “Registrar”, substitute “Minister”.

**Subsection 258 (1)**—

Omit “Registrar”, substitute “Minister”.

**Subsection 258 (2)**—

Omit the subsection.

**Paragraphs 259 (3) (a) and (b)**—

Omit “Appeals Board”, substitute “Administrative Appeals Tribunal”.

**Subsections 260 (2) and (3)**—

Omit “Registrar” (first occurring), substitute “Minister”.

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**NOTE**

**Principal Act**

1. Reprinted as at 28 February 1995. See also Acts Nos. 20, 21, 25, 54 and 56, 1995; Nos. 39 and 62, 1996.

*[Presentation speech made in Assembly on 26 September 1996]*