



AUSTRALIAN CAPITAL TERRITORY

Land (Planning and Environment) (Amendment) Act (No. 3) 1996

No. 85 of 1996

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AUSTRALIAN CAPITAL TERRITORY

Land (Planning and Environment) (Amendment) Act (No. 3) 1996

No. 85 of 1996

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

[Notified in ACT Gazette S345: 24 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. 3) 1996*.

Commencement

2. (1) This Part commences 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.

PART II—LAND (PLANNING AND ENVIRONMENT) ACT 1991

Interpretation

3. In this Part—

“Principal Act” means the *Land (Planning and Environment) Act 1991*.¹

Interpretation

4. Section 4 of the Principal Act is amended—

(a) by omitting “4 or” from paragraphs (a) and (b) of the definition of “controlled activity”; and

(b) by inserting the following definitions:

“ ‘Commissioner’ means the Commissioner for Land and Planning appointed under section 274A;

‘public land’ means land identified by the Plan as public land;

‘public street’ has the same meaning as in the *Motor Traffic Act 1936*.”.

Interpretation

5. Section 5 of the Principal Act is amended by omitting the definition of “Chief Planner”.

Object

6. Section 7 of the Principal Act is amended—

(a) by inserting in subsection (1) “ecologically sustainable, healthy,” before “attractive”;

(b) by omitting subsection (2) and substituting the following subsection:

“(2) The Plan shall set out the planning principles and policies for giving effect to its object.”;

(c) by omitting paragraph (3) (c); and

(d) by omitting from paragraph (3) (f) “that Part” and substituting “section 193”.

Effect of Plan

7. Section 8 of the Principal Act is amended—

(a) by omitting from subsection (1) “(1) Subject to subsection (2), the Territory” and substituting “The Territory”; and

(b) by omitting subsection (2).

Effect of draft Plan variations

8. Section 9 of the Principal Act is amended—

- (a) by adding “or” at the end of paragraph (b) of the definition of “defined period” in subsection (3); and
- (b) by omitting paragraph (c) from the definition of “defined period” in subsection (3).

Preparation of variations

9. Section 15 of the Principal Act is amended by omitting subsection (3).

Substitution

10. Section 16 of the Principal Act is repealed and the following section substituted:

Consultation with Conservator

“16. In preparing a draft Plan variation, the Authority shall—

- (a) consider any recommendation or submission made by the Conservator in relation to the draft variation, including any preliminary draft Plan of Management under Subdivision D of Division 5 of Part V accompanying the recommendation or submission; and
- (b) if the draft variation is to identify or affect public land—consult with the Conservator, unless the draft gives effect to a recommendation of the Conservator under section 192.”.

Public consultation

11. Section 19 of the Principal Act is amended by inserting after paragraph (1) (b) the following paragraph:

- “(ba) stating that copies of written comments about the draft variation submitted pursuant to the invitation in paragraph (b) or otherwise, or received from the National Authority, are to be made available for public inspection for a period of 21 days following the expiration of the period referred to in paragraph (b), at specified places;”.

Public inspection of comments

12. Section 21 of the Principal Act is amended—

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) “subsection (1)” and substituting “paragraph 19 (1) (ba)”; and

- (c) by omitting from subsection (2) “in the notice” and substituting “under that paragraph”.

Revision, deferral or withdrawal of draft Plan variations

13. Section 22 of the Principal Act is amended—

- (a) by omitting from subsection (1) “subsection 19 (1)” and substituting “paragraph 19 (1) (b)”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) The Authority shall cause to be published a notice under paragraph (1) (b) or (c) in a daily newspaper on the same day, or as soon as possible after, the publication of the notice in the *Gazette*.”;
- (c) by inserting in subsection (5) “, and in a daily newspaper,” after “*Gazette*”; and
- (d) by omitting subsection 22 (6).

Submission of draft Plan variation to Executive

14. Section 24 of the Principal Act is amended—

- (a) by omitting from subsection (1) “subsection 19 (1)” and substituting “paragraph 19 (1) (b)”;
- (b) by inserting in subsection (1) “(as revised, if at all, under section 22)” after “variation” (first occurring);
- (c) by omitting from paragraph (1) (b) “relevant”; and
- (d) by omitting from subsection (2) “by advertising”.

Executive powers

15. Section 26 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

“(4) The Executive shall cause any directions given under paragraph (1) (b) to be published in the *Gazette*.

“(5) The Authority shall cause to be published a notice under subparagraph (1) (b) (v) or (vi) in a daily newspaper on the same day, or as soon as possible after, the publication of the notice in the *Gazette*.

“(6) After approving a draft Plan variation under paragraph (1) (a), the Executive may, before the draft variation is laid before the Legislative Assembly, revoke the approval and return the draft variation to the Authority under paragraph (1) (b).”.

Consideration of Plan variation by Legislative Assembly

16. Section 29 of the Principal Act is amended—

- (a) by omitting from subsection (1) “A Plan variation” and substituting “Subject to subsection 26 (6), a Plan variation”;
- (b) by inserting in subsections (6) and (8) and paragraph (9) (a) “, and in a daily newspaper,” after “*Gazette*”; and
- (c) by inserting after subsection (9) the following subsection:

“(9A) The Minister shall cause to be published a notice under paragraph (9) (b) in a daily newspaper on the same day, or as soon as possible after, the publication of the notice in the *Gazette*.”.

Plan variations in relation to defined land

17. Section 32 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or part of a parcel” after “parcel”; and
- (b) by inserting after subsection (4) the following subsection:

“(4A) A variation of the Plan under subsection (1) has the effect of the parcel, or part of a parcel, of land which is subdivided ceasing to be defined land.”.

Subdivision heading

18. The heading to Subdivision A of Division 4 of Part II of the Principal Act is omitted.

Establishment

19. Section 33 of the Principal Act is amended by adding at the end the following subsections:

“(2) The Chief Executive shall create and maintain an Executive office in the Government Service the duties of which include performing the functions of the Authority.

“(3) The Authority shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (2).”.

Repeal

20. Section 34 of the Principal Act is repealed.

Executive policy directions

21. Section 37 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

“(1) The Executive or the Minister may give the Authority the following written directions:

- (a) directions about the policies and objectives it should pursue in the performance of its functions;
- (b) directions to review the Plan, or any specified part of the Plan;
- (c) directions about any other aspect of the performance of its functions.

“(2) The Legislative Assembly may, by resolution, recommend that the Executive give the Authority specified directions under subsection (1).

“(3) If the Legislative Assembly recommends, under subsection (2), that the Executive give directions to the Authority, the Executive shall consider the recommended directions and shall, by instrument tabled in the Legislative Assembly—

- (a) give the Authority directions under subsection (1) as recommended, or in a modified form; or
- (b) refuse to give the Authority the recommended directions.”.

Repeal

22. Section 42 of the Principal Act is repealed.

Repeal

23. Subdivision B of Division 4 of Part II of the Principal Act is repealed.

Constitution

24. Section 97 of the Principal Act is amended by omitting from paragraph (1) (a) “Chief Planner” and substituting “Authority”.

Directions

25. Section 113 of the Principal Act is amended by inserting “on” after “day”.

Submission to Minister

26. Section 116 of the Principal Act is amended by adding at the end of subsection (1) “, together with the determined fee”.

Substitution

27. Section 117 of the Principal Act is repealed and the following section substituted:

Public inspection

“117. (1) After a preliminary assessment is submitted to the Environment Minister under section 116, he or she shall cause to be published in the *Gazette*, and in a daily newspaper, a notice stating that copies of the preliminary assessment are available for public inspection during a specified period of not less than 21 days at specified places.

“(2) The Environment Minister shall, at the places, and within the period, specified in the notice—

- (a) make copies of the preliminary assessment available for public inspection; and
- (b) cause a copy of the preliminary assessment to be given to any person on payment by the person of the determined fee.

“(3) The Environment Minister shall cause a copy of the preliminary assessment to be sent, without charge, to the Conservation Council of the South-East Region and Canberra (Inc.).”.

Directions

28. Section 123 of the Principal Act is amended—

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

“(1) A direction by a Minister that an Assessment be made in relation to a defined decision shall be in writing given to the proponent.

“(1A) Within 14 days after a direction by a Minister under subsection (1) that an Assessment is to be made in relation to a defined decision, the Minister shall give the proponent detailed directions specifying the following:

- (a) the form of the Assessment;
 - (b) 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;
 - (c) 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;
 - (d) 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.”;
- (b) by omitting from subsection (2) “paragraph (1) (b)” and substituting “subsection (1A)”;
 - (c) by omitting from subsection (3) “a direction that an Assessment be made” and substituting “detailed directions for an Assessment under subsection (1A)”;

- (d) by omitting from paragraph (3) (b) “direction pursuant to paragraph (1) (b)” and substituting “directions”; and
- (e) by omitting from subsection (4) “subparagraph (1) (b) (iii)” and substituting “paragraph (1A) (c)”.

Interpretation

29. Section 159 of the Principal Act is amended—

- (a) by inserting in paragraph (c) of the definition of “lease” in subsection (1) “or arising” after “granted”;
- (b) by omitting from subsection (1) the definitions of “public land”, “public road” and “Territory Land”;
- (c) by inserting in subsection (1) the following definitions:
 - “ ‘consolidation’ means the surrender of 2 or more leases held by the same lessee and the grant of a new lease or leases to that lessee for the purpose of consolidating the parcels of land comprised in the surrendered leases;
 - ‘nominal rent lease’ means a lease of Territory land for nominal rent;
 - ‘rental lease’ means a lease of Territory Land for rent in excess of nominal rent;
 - ‘rural lease’ means a lease of Territory Land granted for rural purposes or purposes including rural purposes;
 - ‘subdivision’ means the surrender of 1 lease, or the surrender of more than 1 lease, held by the same lessee, and the grant of new leases to that lessee for the purpose of subdividing the parcel or parcels of land comprised in the surrendered lease or leases, but does not include the subdivision of land under the *Unit Titles Act 1970*;”;
- (d) by omitting subsection (3).

Granting of leases

30. Section 161 of the Principal Act is amended by inserting after subsection (2) the following subsections:

“(2A) The Executive may restrict the persons eligible for the grant of a lease under paragraph (1) (a), (b) or (c) by specifying, in the relevant notice of auction, tender or ballot, a class of persons eligible or ineligible for the grant of a lease pursuant to the auction, tender or ballot.

“(2B) Where, pursuant to a restriction imposed under subsection (2A), only 1 person is eligible for the grant of a lease under paragraph (1) (a), (b) or (c), the Executive may grant a lease to that person under

paragraph (1) (d) without auctioning the lease, calling tenders or conducting a ballot (as the case may be).”.

Repeal

31. Section 165 of the Principal Act is repealed.

Eligibility for certain classes of leases

32. Section 167 of the Principal Act is amended—

- (a) by inserting in subsection (5) “, or any other person having an interest in such a lease,” after “applies”; and
- (b) by inserting in subsection (6) “, or to any other person having an interest in such a lease” after “applies”.

Grant of further residential leases

33. Section 171 of the Principal Act is amended—

- (a) by omitting paragraph (a);
- (b) by omitting from paragraph (b) “the lessee of the land” and substituting “the holder of a residential lease of land”;
- (c) by omitting from paragraph (c) “and”;
- (d) by omitting paragraph (d) and substituting the following paragraphs:
 - “(d) the lessee pays the fee calculated pursuant to the determination under subsection (2); and
 - (e) the lessee surrenders the existing lease;”;
- (e) by omitting all the words after “land” (last occurring) and substituting “for a term not exceeding 99 years to commence on the day immediately following the date of surrender of the existing lease”; and
- (f) by adding at the end the following subsections:
 - “(2) The Minister may make a determination for the purposes of paragraph (1) (d).
 - “(3) If the term of a further lease granted under subsection (1) does not exceed the term of the existing lease, the fee payable under paragraph (1) (d) shall not exceed the cost of granting the lease.
 - “(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Insertion

34. After section 171 of the Principal Act the following section is inserted:

Grant of further rural leases

“171A. (1) Where—

- (a) the holder of a rural lease applies to the Executive for the grant of a further rural lease of the same land for the same purposes;
- (b) neither the Territory nor the Commonwealth requires the land for a public purpose;
- (c) the lessee pays the fee calculated pursuant to the determination under subsection (2); and
- (d) the lessee surrenders the existing lease;

the Executive shall, on behalf of the Commonwealth, grant the lessee a further rural lease of that land for the same purposes for a term not exceeding the maximum set out in the determination under subsection (2), and subject to any conditions set out in that determination, to commence on the day immediately following the date of surrender of the existing lease.

“(2) The Minister may make a determination for the purposes of subsection (1).

“(3) If the term of a further lease granted under subsection (1) does not exceed the term of the existing lease, the fee payable under paragraph (1) (c) shall not exceed the cost of granting the lease.

“(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Grant of further leases for purposes other than residential or rural

35. Section 172 of the Principal Act is amended—

- (a) by omitting paragraph (a);
- (b) by omitting from paragraph (b) “the lessee” and substituting “the holder of a lease of Territory Land other than a residential lease or a rural lease”;
- (c) by adding at the end of paragraph (b) “for the same purposes”;
- (d) by omitting paragraphs (d) and (e);
- (e) by omitting from paragraph (f) “and”;
- (f) by omitting paragraph (g) and substituting the following paragraphs:

“(g) the lessee pays the fee calculated pursuant to the determination under subsection (2); and

- (h) the lessee surrenders the existing lease;”;
- (g) by omitting all the words after “land” (last occurring) and substituting “for the same purposes for a term not exceeding 99 years to commence on the day immediately following the date of surrender of the existing lease”; and
- (h) by adding at the end the following subsections:
 - “(2) The Minister may make a determination for the purposes of paragraph (1) (g).
 - “(3) If the term of a further lease granted under subsection (1) does not exceed the term of the existing lease, the fee payable under paragraph (1) (g) shall not exceed the cost of granting the lease.
 - “(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Insertion

36. After section 172 of the Principal Act the following section is inserted:

Grant of further lease—unit titles

“172A. (1) The Executive shall not, under section 171, 171A or 172, grant a further lease of any unit, or the common property, forming part of a registered units plan otherwise than upon a joint application by the corporation on behalf of the lessees of all the units and on its own behalf.

“(2) On an application as referred to in subsection (1), the Executive shall grant a further lease of a unit, or of common property, forming part of a registered units plan only if—

- (a) the Executive also grants a further lease of each other unit, and the common property, forming part of the units plan; and
- (b) the term of each such further lease is the same.

“(3) Words and phrases used in this section have the same meaning as in the *Unit Titles Act 1970*.”.

Lessee’s rights in respect of improvements

37. Section 173 of the Principal Act is amended—

- (a) by omitting from subsection (1) the definition of “improvement” and substituting the following definition:

“ ‘improvement’, in relation to land, means—

- (a) a building or a structure on the land; or
- (b) in relation to land held under a rural lease—

- (i) a building or structure on or under the land;
or
 - (ii) any improvement to the land reasonably undertaken for rural purposes;”;
- (b)** by inserting in subsection (1) the following definition:
 - “ ‘undertaken’, in relation to an improvement that is a building or structure, means the construction, erection or installation of the building or structure;”;
- (c)** by inserting after subsection (1) the following subsection:
 - “(1A) This section applies only to the following improvements to land:
 - (a) an improvement undertaken in a manner consistent with the law of the Territory, and with any lease over the land, except—
 - (i) an improvement undertaken by the Territory or the Commonwealth (subject to paragraph (b)); or
 - (ii) an improvement acquired by the Territory or the Commonwealth (subject to paragraph (c));
 - (b) an improvement undertaken by the Territory or the Commonwealth, where the Territory or the Commonwealth has received, or is entitled to receive, payment for that improvement;
 - (c) an improvement acquired by the Territory or the Commonwealth, where the Territory or the Commonwealth has received, or is entitled to receive, payment for the improvement.”;
- (d)** by inserting in subsection (2) “to which this section applies” after “improvements” (first occurring);
- (e)** by inserting in subsection (3) “to which this section applies” after “improvements” (first occurring);
- (f)** by inserting in paragraph (3) (b) “to which this section applies” after “improvements”;
- (g)** by inserting after subsection (5) the following subsection:
 - “(5A) Subject to subsections (6) and (8), if, prior to the expiration of the term of a lease of Territory land, the Executive withdraws all or part of the leased land from the lease pursuant to a provision of the lease, the provisions of this section relating to the payment to the lessee of the value of the improvements on the land 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 withdrawal.”;

- (h) by inserting in subsection (6) “or (5A)” after “(5)”; and
- (i) by omitting from subsection (8) “and (5)” and substituting “, (5) and (5A)”.

Determination of value of improvements

38. Section 174 of the Principal Act is amended—

- (a) by omitting the definition of “prescribed day” in subsection (1);
- (b) by inserting in subsection (1) the following definition:

“ ‘assessment day’ means—

- (a) in relation to land a lease of which has expired—the day of expiry;
 - (b) in relation to land a lease of which has been terminated or surrendered—the day of termination or surrender, as the case may be; or
 - (c) in relation to land which has been withdrawn from a lease—the day of withdrawal;”;
- (c) by omitting from subsection (2) “the day that is the prescribed day” and substituting “the assessment day”;
 - (d) by omitting from subsection (2) “prescribed” (last occurring) and substituting “assessment”;
 - (e) by omitting from subsection (3) “the lease of the land had been renewed” and substituting “a further lease of the land had been granted”; and
 - (f) by adding at the end the following subsection:

“(5) Where compensation is payable under subsection 173 (5A), the Minister shall, in valuing the improvements, assume that the leased land or part of the leased land (as the case may be) had not been withdrawn from the lease.”.

Use of land for leased purpose

39. Section 175 of the Principal Act is amended—

- (a) by adding at the end “, subject to this section”; and
- (b) by adding at the end the following subsections:

“(2) Notwithstanding the lease of Territory Land for residential purposes, such land may also be used—

- (a) for a home occupation within the meaning of the Plan; or

- (b) for a home business within the meaning of the Plan, in accordance with an approval under Part VI.

“(3) Notwithstanding the purpose permitted by a lease of Territory Land, the land may be used—

- (a) for a development of a type prescribed by the regulations, in accordance with an approval under Part VI; or
- (b) for any other activity prescribed by the regulations.”.

Certificates of compliance

40. Section 179 of the Principal Act is amended—

- (a) by omitting from subsection (1) “certificate” and substituting “certificate of compliance to the effect”;
- (b) by inserting after subsection (1) the following subsections:

“(1A) Subject to subsection (2), where a building and development provision of a lease of Territory Land has been partially complied with, the Minister may issue a certificate of compliance to that effect.

“(1B) A certificate of compliance under subsection (1A) may be issued subject to a condition (specified in the certificate) that the lessee provide security in a specified form against failure to complete specified outstanding work.”;

- (c) by omitting from subsection (2) “certificate under subsection (1)” and substituting “certificate of compliance”;
- (d) by omitting from subsection (2) “requirements of that subsection” and substituting “other requirements of this section”; and
- (e) by omitting from paragraph (2) (a) all the words after “subdivision” and substituting “under the *Unit Titles Act 1970* that is subject to a building and development provision, that the provision has been complied with, or a certificate of compliance has been issued under this section in respect of that provision”.

Transfer of land subject to building and development provision

41. Section 180 of the Principal Act is amended—

- (a) by omitting subparagraph (1) (d) (ii) and substituting the following subparagraph:
 - “(ii) a certificate of compliance under section 179; or”;
- (b) by omitting from subsection (2) “shall” and substituting “may”;
- and
- (c) by adding at the end the following subsections:

“(3) In deciding under subsection (2) whether to consent to an assignment or transfer of a lease, the Minister shall take into consideration any matters determined by the Minister for the purposes of this section.

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

Mortgage of leasehold subject to building and development provision

42. Section 181 of the Principal Act is amended by omitting from paragraph (a) “certificate under subsection 179 (1)” and substituting “certificate of compliance under section 179”.

Substitution

43. Section 184 of the Principal Act is repealed and the following sections are substituted:

Application to surrender and regrant of leases

“184. A reference in this Division 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, subject to different provisions, 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;

except where a lease is surrendered and a further lease is granted under section 171, 171A or 172.

Variation of nominal rent lease—change of use charge

“184A. (1) The Executive shall not execute a variation of a nominal rent lease unless the lessee has paid the Territory any change of use charge determined by the Minister under subsection (2), subject to any remission or increase under section 184C.

“(2) The Minister shall determine the change of use charge for a variation of a nominal rent lease in accordance with the formula—

$$\text{CUC} = (\mathbf{V}_1 - \mathbf{V}_2) \times 75\%$$

where:

CUC is the change of use charge payable for the variation of the lease;

V₁ is the capital sum that the lease might be expected to realise if—

- (a) the lease were to be varied as proposed;

- (b) the lease were offered for sale in good faith immediately after the variation on such reasonable terms and conditions as a genuine seller would require; and
- (c) the rent payable throughout the term of the lease were a nominal rent;

V₂ is the capital sum that the lease might be expected to realise if—

- (a) the lease were not to be varied during the remainder of its term;
- (b) the lease were offered for sale in good faith immediately before the variation on such reasonable terms and conditions as a genuine seller would require; and
- (c) the rent payable throughout the term of the lease were a nominal rent.

“(3) Where the capital value assessed as ‘**V₁**’ under subsection (2) is equal to or less than the capital value assessed as ‘**V₂**’ under that subsection, no change of use charge is payable under subsection (1).

“(4) Insofar as this section applies, by virtue of section 184, to the surrender of a lease and the grant of a new lease—

- (a) the reference in paragraph (c) of the definition of ‘**V₁**’ in subsection (2) to the term of the lease is to be read as a reference to the term of the new lease; and
- (b) the reference in paragraph (c) of the definition of ‘**V₂**’ in subsection (2) to the term of the lease is to be read as a reference to the term of the lease to be surrendered.

“(5) A variation of a lease has no effect if the change of use charge payable under subsection (1) for the variation is not paid.

New change of use charge formula

“184B. (1) 18 months after the day on which section 184A commences, the formula in subsection 184A (2) is to be omitted and the following formula substituted:

$$\mathbf{CUC = V_1 - V_2}$$

“(2) The formula in subsection 184A (2), as in force immediately before the day on which the substitution of the formula takes effect under subsection (1) of this section, continues to apply in relation to the variation of a lease if the variation had been applied for, but the lease had not been varied, immediately before that day.

Variation of nominal rent leases—remission or increase of change of use charge

“184C. (1) The Minister may, on application by the lessee, remit a change of use charge under section 184A for the variation of a nominal rent lease in circumstances prescribed by the regulations.

“(2) The Minister may make regulations for the purposes of subsection (1) providing for the remission of change of use charges for the variation of specified leases, for leases of specified classes, or for specified types of lease variation.

“(3) The Minister may increase a change of use charge under section 184A for the variation of a nominal rent lease in circumstances prescribed by the regulations.

“(4) The Minister may make regulations for the purposes of subsection (3) providing for the increase of change of use charges for the variation of specified leases, for leases of specified classes, or for specified types of lease variation.

“(5) Regulations under subsection (2) or (4) take effect—

(a) on the day immediately following the last day on which they could have been disallowed under section 6 of the *Subordinate Laws Act 1989*; or

(b) on any later date specified in the regulations;

unless they are disallowed under section 6 of that Act.

Variation of rental leases

“184D. (1) The Executive shall not execute a variation of a rental lease unless any rent and additional rent payable under the lease up to the day of variation has been paid.

“(2) Where the Executive executes a variation of a rental lease, the Minister shall reappraise the rent payable under the lease, following (to the extent possible) the method provided by the rental provisions of the lease.

“(3) Where the Executive executes a variation of a rental lease, the rent payable under the lease is to be adjusted in accordance with the reappraisal under subsection (2) with effect from the date of variation.

“(4) Subsections (2) and (3) do not apply to a variation of a rental lease—

(a) to reduce the rent payable to a nominal rent; or

(b) otherwise affecting the rental provisions of the lease.”.

Variation of lease to pay out rent

44. Section 186 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “and” (last occurring);
- (b) by adding at the end of paragraph (1) (c) “; and”;
- (c) by adding at the end of subsection (1) the following paragraph:
 - “(d) the lessee has paid the Territory an amount determined by the Minister by reference to any policy direction made under subsection (1A).”; and
- (d) by inserting after subsection (1) the following subsections:
 - “(1A) The Minister may make policy directions for the purpose of paragraph (1) (d).
 - “(1B) A policy direction under subsection (1A) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Insertion

45. After section 186 of the Principal Act the following section and Division are inserted:

No variations to extend term

“186A. The Executive shall not execute a variation of a lease of Territory Land to extend the term of the lease.

“Division 3A—Consolidation and subdivision

Application—nominal rent leases of Territory Land

“187. This Division applies only in relation to the consolidation and subdivision of nominal rent leases.

Consolidation and subdivision—change of use charge

“187A. (1) The Executive shall not execute a consolidation or a subdivision unless the lessee has paid the Territory any change of use charge determined by the Minister under subsection (2), subject to any remission or increase under section 187C.

“(2) The Minister shall determine the change of use charge for a consolidation or a subdivision in accordance with the formula—

$$\text{CUC} = (\mathbf{V}_1 - \mathbf{V}_2) \times 75\%$$

where:

CUC is the change of use charge payable for the consolidation or subdivision;

V₁ is the capital sum that the new lease or leases to be granted pursuant to the consolidation or subdivision might be expected to realise if—

- (a) the consolidation or subdivision were to take place as proposed;
- (b) the new lease or leases were offered for sale in good faith immediately after the variation on such reasonable terms and conditions as a genuine seller would require; and
- (c) the rent payable throughout the term of the new lease or leases were a nominal rent;

V₂ is the capital sum that the lease or leases to be surrendered pursuant to the consolidation or subdivision might be expected to realise if—

- (a) no consolidation or subdivision were to take place during the remainder of the term of the surrendered lease or leases;
- (b) the lease or leases were offered for sale in good faith immediately before the consolidation or subdivision on such reasonable terms and conditions as a genuine seller would require; and
- (c) the rent payable throughout the term of the lease or leases to be surrendered were a nominal rent.

“(3) Where the capital value assessed as ‘**V₁**’ under subsection (2) is equal to or less than the capital value assessed as ‘**V₂**’ under that subsection, no change of use charge is payable under subsection (1).

“(4) A consolidation or subdivision has no effect if the change of use charge payable under subsection (1) for the consolidation or subdivision is not paid.

New change of use charge formula

“187B. (1) 18 months after the day on which section 187A commences, the formula in subsection 187A (2) is to be omitted and the following formula substituted:

$$\text{CUC} = \mathbf{V}_1 - \mathbf{V}_2$$

“(2) The formula in subsection 187A (2), as in force immediately before the day on which the substitution of the formula takes effect under subsection (1) of this section, continues to apply in relation to a consolidation or subdivision if the consolidation or subdivision had been applied for, but had not been effected, immediately before that day.

Consolidation and subdivision—remission or increase of change of use charge

“187C. (1) The Minister may, on application by a lessee applying for a consolidation or subdivision, remit a change of use charge under

section 187A for the consolidation or subdivision in circumstances prescribed by the regulations.

“(2) The Minister may make regulations for the purposes of subsection (1) providing for the remission of change of use charges for specified consolidations, subdivisions or leases, or for specified types of consolidation, subdivision or lease.

“(3) The Minister may increase a change of use charge under section 187A for a consolidation or subdivision in circumstances prescribed by the regulations.

“(4) The Minister may make regulations for the purposes of subsection (3) providing for the increase of change of use charges for specified consolidations, subdivisions or leases, or for specified types of consolidation, subdivision or lease.

“(5) Regulations under subsection (2) or (4) take effect—

(a) on the day immediately following the last day on which they could have been disallowed under section 6 of the *Subordinate Laws Act 1989*; or

(b) on any later date specified in the regulations;

unless they are disallowed under section 6 of that Act.”.

Termination of leases

46. Section 188 of the Principal Act is amended—

(a) by omitting from subsection (1) “the provisions of this Part or the provisions of his or her lease” and substituting “this Part or the lease”;

(b) by inserting after subsection (2) the following subsection:

“(2A) The Minister shall cause a copy of a notice of the termination of a lease of Territory Land under subsection (1) to be served on—

(a) the Registrar-General; and

(b) any person having an interest in the land, being an interest registered under the *Land Titles Act 1925*;

at the same time as, or as soon as practicable after, the notice under subsection (1) is served.”;

(c) by omitting from subsection (3) “the provisions of this Part or the provisions of his or her licence” and substituting “this Part or the licence”; and

(d) by adding at the end the following subsection:

“(6) The validity of the termination of a lease is not affected by a failure to comply with subsection (2A).”.

Recommendations to Authority

47. Section 192 of the Principal Act is amended by adding at the end of subparagraph (b) (i) “to reduce or increase the size or the area, or to alter the shape of the area”.

Reserved areas

48. Section 193 of the Principal Act is amended by omitting all the words from and including “The purposes” to and including “paragraph 192 (a) are for” and substituting “Public land may be reserved by the Plan under paragraph 7 (3) (f) for any of the following purposes:”.

Access to leased land from public streets and carparks

49. Section 216 of the Principal Act is amended by omitting from paragraphs (1) (a) and (b) “public road” and substituting “public street”.

Notification of certain leases to Legislative Assembly

50. Section 216A of the Principal Act is amended—

- (a) by omitting subsection (2);
- (b) by omitting from subsection (3) “or (2)”; and
- (c) by omitting from subsection (4) the definition of “unrecommended lease”.

Interpretation

51. Section 222 of the Principal Act is amended—

- (a) by omitting “to conduct a controlled activity” from the definition of “application” in subsection (1) and substituting “for approval to undertake a development”;
- (b) by omitting “, 240 or 241” from paragraph (a) of the definition of “approval” in subsection (1);
- (c) by omitting “235 or” and “, as the case requires” from the definition of “objection” in subsection (1);
- (d) by inserting in subsection (1) the following definitions:
 - “ ‘building’ includes—
 - (a) an addition to a building;
 - (b) a structure attached to a building; and
 - (c) a part of a building;
 - ‘consolidation’ has the same meaning as in Part V;
 - ‘development’ means activity in relation to land that consists of 1 or more of the following activities:

- (a) the erection, alteration or demolition of a building or structure on or under the land;
 - (b) the carrying out of earthworks or other construction work on or under the land;
 - (c) the carrying out of work that would affect the landscape of the land except where the land is leased for residential purposes only and is not specified in the Heritage Places Register, or an Interim Heritage Places Register, as a heritage place;
 - (d) a use of the land for a business—
 - (i) that is a home business within the meaning of the Plan; and
 - (ii) that is not expressly authorised by a current lease;
 - (e) a use of the land for an activity—
 - (i) that is prescribed for the purposes of paragraph 175 (3) (b); and
 - (ii) that is not expressly authorised by a current lease;
 - (f) if the land is unleased Territory Land—a use of the land that is not authorised by a current licence or permit granted in respect of the land under an Act or regulations;
 - (g) the erection, fixing or displaying of a sign or advertising material on the land, or on a structure or building on the land, otherwise than in accordance with a right to do so expressly given by a current licence granted under this Act or a current lease;
 - (h) a variation of a lease of the land;
 - (j) an activity declared by another Act to be a development activity for the purposes of this Part; but does not include a use of unleased Territory Land by or on behalf of the Territory for a purpose for which it was used before the commencement of this Act;
- ‘relevant authority’, in relation to an application, means—
- (a) if the Minister has, under subsection 229A (1), referred the application to the Commissioner for

determination and that reference has not been revoked—the Commissioner; or

(b) in any other case—the Minister;

‘subdivision’ has the same meaning as in Part V;

‘structure’ includes a fence, mast, antenna, aerial, road, footpath, driveway, carpark, culvert or service conduit or cable.”; and

(e) by omitting subsections (3) and (4) and substituting the following subsections:

“(3) A reference in this Part to the variation of a lease shall be read as including a reference to—

(a) the surrender of a lease and the granting of a new lease, subject to different provisions, to the same lessee over land—

(i) that is the whole or part of the land comprised in the surrendered lease; and

(ii) that is not defined land within the meaning of Subdivision D of Division 3 of Part II;

except where a lease is surrendered and a further lease is granted under section 171, 171A or 172;

(b) a consolidation; and

(c) a subdivision.

“(4) The regulations may prescribe activity of a kind referred to in the definition of ‘development’ in subsection (1) that shall be taken not to be development for the purposes of this Part.”.

Repeal

52. Section 223 of the Principal Act is repealed.

Repeal

53. Subdivision A of Division 2 of Part VI is repealed.

Offence—development

54. Section 225 of the Principal Act is amended—

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

“(1) A person shall not, without reasonable excuse, undertake a development otherwise than in accordance with an approval.

Penalty: 50 penalty units.”; and

- (b) by omitting from subsection (2) “conduct a controlled activity” and substituting “undertake a development”.

Application to undertake development

55. Section 226 of the Principal Act is amended—

- (a) by omitting from subsection (1) “conduct a controlled activity” and substituting “undertake a development”;
- (b) by omitting from paragraph (1) (b) “controlled activity” and substituting “development”;
- (c) by omitting subsection (2) and substituting the following subsections:

“(2) Where an application is made by a person who is not the lessee of the place to which the application relates, the application shall, in addition to being executed by the person by whom it is made, be executed by—

- (a) if the place to which the application relates is subject to a lease—the lessee of the place; or
- (b) in any other case—the Minister.

“(2A) A lessee or the Minister may, by writing, appoint a person to act on his or her behalf in relation to an application.

“(2B) A person who executes an application under paragraph (2) (a) shall be taken to be an applicant in relation to the application.”;

- (d) by omitting from subsection (3) “, before giving notice under section 229”; and
- (e) by omitting subsection (4) and substituting the following subsections:

“(4) Where the Minister makes an alteration or a correction under subsection (3), he or she shall—

- (a) advise the applicant, or if there is more than 1, each applicant, that the alteration or correction has been made; and
- (b) if notice has been given under section 229 of the making of the application, give notice in accordance with that section of the application as so altered or corrected.

“(5) An application may be made under this section in respect of a development that has been undertaken without approval.”.

Restrictions on inspection of applications

56. Section 228 of the Principal Act is amended—

- (a) by omitting from subsection (1) “to conduct a controlled activity” and substituting “for approval to undertake a development”;
- (b) by omitting from paragraph (3) (a) “to conduct a controlled activity” and substituting “for approval to undertake a development”; and
- (c) by omitting from subsection (3) “to conduct the controlled activity” and substituting “for approval to undertake the development”.

Notice of application

57. Section 229 of the Principal Act is amended—

- (a) by omitting from subparagraph (1) (a) (i) “each” and substituting “the”;
- (b) by adding at the end of paragraph (1) (a) “and”;
- (c) by omitting from the end of paragraph (1) (b) “and”;
- (d) by omitting paragraph (1) (c);
- (e) by omitting subsection (2) and substituting the following subsection:

“(2) Paragraph (1) (a) does not apply if, 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.”;
- (f) by omitting from subsection (3) “is to conduct a controlled activity specified in item 2 or 3 of Schedule 4” and substituting “relates to a development that is or includes a variation of a lease”;
- (g) by omitting from subsection (3) “place to which the application relates” and substituting “land subject to the lease to be varied”;
- (h) by omitting from paragraph (4) (a) all the words after “application” and substituting “that relates to a place specified in the Heritage Places Register, or an Interim Heritage Places Register, as a heritage place.”;
- (i) by inserting after paragraph (4) (a) the following paragraph:

“(ab) shall forward to the Conservator for comment a copy of each application that relates to public land; and”;
- (j) by omitting subsections (5), (5A) and (6) and substituting the following subsections:

“(5) The Minister shall cause to be erected on the place to which an application relates a sign that specifies the development proposed to be undertaken in relation to that place.

“(6) A person shall not, without lawful excuse, move, deface, damage, obscure or otherwise interfere with a sign erected under subsection (5).

Penalty: 5 penalty units.

“(6A) A person shall not, without reasonable excuse, prevent or restrict access to a sign erected under subsection (5).

Penalty: 5 penalty units.

“(6B) The validity of an approval is not to be taken to be affected by a failure by the Minister to comply with subsection (5).”; and

- (k) by omitting from subsection (8) all the words after “which” and substituting “provisions of subsections (1) to (5) (inclusive) are not to apply”.

Substitution

58. Section 230 of the Principal Act is repealed and the following sections are substituted:

Determination of applications

“229A. (1) The Minister may, for the purposes of this section, by instrument prescribe classes of applications that are to be referred to the Commissioner for determination.

“(2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

“(3) The Minister shall refer all applications included in a prescribed class of applications to the Commissioner for determination.

“(4) The Minister may refer an application that is not included in a prescribed class of applications to the Commissioner for determination.

“(5) Subject to subsection (6), the Commissioner shall determine all applications referred to him or her under subsection (3) or (4) and the Minister shall determine all other applications.

“(6) Where an application has been referred to the Commissioner for determination under subsection (3) or (4), the Minister may, at any time before the application is determined by the Commissioner, by notice in writing given to the Commissioner, revoke the reference.

“(7) Where the Minister revokes a reference of an application to the Commissioner, the Minister shall—

- (a) determine the application; and

- (b) cause a copy of the notice of revocation given to the Commissioner under subsection (6) to be published in the *Gazette* within 21 days after the day on which the notice is given to the Commissioner.

“(8) Subsection (5) and paragraph (7) (a) shall not be taken to derogate from the power of the Minister to delegate his or her power to determine an application.

Approvals

“230. (1) The relevant authority may approve or refuse to approve an application.

“(2) The relevant authority is to be taken to have refused to approve an application if he or she fails to make a decision in relation to the application before the expiration of the prescribed period.

“(3) Notwithstanding subsection (2), the relevant authority may approve an application at any time after the expiration of the period prescribed for the purposes of that subsection in relation to the application until the earliest of the following dates:

- (a) the date on which the Administrative Appeals Tribunal has finally dealt with an application under section 275 to review the relevant authority’s deemed refusal under subsection (2) of this section;
- (b) 6 months after the date of the application, unless paragraph (c) applies;
- (c) if an Assessment or a variation to the Plan is required in relation to the application—12 months after the date of the application.

“(4) Subject to subsection (5), where the relevant authority approves an application to undertake a development that includes an activity that is not permitted by a lease of the land on which the activity is to be carried out, the approval shall not take effect in relation to that activity until the lease is varied so as to permit the activity.

“(5) Subsection (4) does not apply in relation to—

- (a) an activity referred to in paragraph (c) of the definition of ‘development’ in subsection 222 (1);
- (b) an activity included in a development of a type prescribed for the purposes of paragraph 175 (3) (a); or
- (c) an activity prescribed for the purposes of paragraph 175 (3) (b).”.

Matters to be considered

59. Section 231 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Minister” (first occurring) and substituting “relevant authority”;

- (b) by omitting from subparagraph (1) (a) (iv) “controlled activity” and substituting “development”; and
- (c) by omitting from paragraph (1) (b) “to conduct a controlled activity affecting the requirements for” and substituting “for approval to undertake a development that would be affected by requirements relating to”.

More information

60. Section 233 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Minister” (first occurring) and substituting “relevant authority”;
- (b) by omitting from subsection (1) “Minister” (second occurring) and substituting “authority”; and
- (c) by omitting from subsections (2) and (3) “Minister” and substituting “relevant authority”.

Effect of failure to furnish further information

61. Section 234 of the Principal Act is amended by omitting all the words after “subsection 233 (1),” and substituting “the relevant authority shall, for the purposes of enabling an application to be made to the Administrative Appeals Tribunal under section 275, be taken to have made a decision refusing the application for approval to undertake the development.”.

Repeal

62. Section 235 of the Principal Act is repealed.

Objections—general

63. Section 237 of the Principal Act is amended by omitting from subsection (3) “conduct a controlled activity” and substituting “undertake a development”.

Repeal

64. Sections 240 and 241 of the Principal Act are repealed.

Substitution

65. Section 242 of the Principal Act is repealed and the following section substituted:

Application approved—notification of decision

“242. (1) If an application is approved by the relevant authority, the Minister shall give the applicant written notice of the approval.

“(2) The notice shall specify the date on which the approval takes effect.

“(3) If approval is given to an application that relates to a variation of a lease, the Minister shall give written notice of the approval to the Registrar-General.”.

Notification of approval or refusal of application

66. Section 243 of the Principal Act is amended—

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

“(1) Notwithstanding section 242, if a decision is made by a relevant authority to approve an application, being a decision in respect of which an application for review may be made to the Administrative Appeals Tribunal under section 276, the Minister 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 person notified under paragraph 229 (1) (a); and

(ii) each person who objected under section 237 (1).”;

(b) by omitting from subparagraph (3) (a) (ii) “controlled activity” and substituting “development”;

(c) by omitting subsection (4) and substituting the following subsection:

“(4) If a decision is made by a relevant authority to refuse an application, the Minister shall give written notice of the decision to—

(a) the applicant;

(b) each person notified under paragraph 229 (1) (a); and

(c) each person who objected under subsection 237 (1).”;

and

(d) by adding at the end the following subsection:

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

Notification where more than 1 objector

67. Section 244 of the Principal Act is amended—

(a) by omitting “or Executive” (first occurring); and

- (b) by omitting “the Minister or Executive (as the case requires)” and substituting “he or she”.

Conditional approvals

68. Section 245 of the Principal Act is amended—

- (a) by omitting from subsection (1) “and sections 240, 241 and 246, the Minister” and substituting “, the relevant authority”;
- (b) by omitting from subsection (1) “Minister” (second occurring) and substituting “authority”;
- (c) by omitting from subsection (2) “Minister” and substituting “relevant authority”;
- (d) by omitting from paragraph (2) (a) “or by a concurring authority”;
- (e) by omitting paragraph (3) (a) and substituting the following paragraph:
 - “(a) that a development is to be carried out to the satisfaction of a specified person or body;”;
- (f) by omitting from paragraph (3) (b) “controlled activity” and substituting “development”;
- (g) by omitting paragraph (3) (c) and substituting the following paragraph:
 - “(c) specifying a period in which a development or any stage of a development is to be carried out;”;
- (h) by omitting from paragraph (3) (e) “conduct a controlled activity” and substituting “carry out a development”;
- (i) by omitting from subparagraph (3) (e) (i) “is” and substituting “are”;
- (j) by omitting from paragraph (3) (h) “controlled activities be conducted” and substituting “a development be carried out”;
- (k) by omitting from paragraph (3) (j) “Minister” (first occurring) and substituting “relevant authority”; and
- (l) by omitting from paragraph (3) (k) “before commencing to conduct the controlled activity (whether in whole or in part)” and substituting “by him or her before the development or a specified part of it is commenced”.

Repeal

69. Section 246 of the Principal Act is repealed.

Minor amendments

70. Section 247 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words after “approval” (first occurring) and substituting “is in force may apply in writing to the relevant authority who gave the approval for an amendment of it.”;
- (b) by omitting from subsection (2) “Minister” and substituting “relevant authority”;
- (c) by omitting paragraph (2) (b);
- (d) by omitting paragraph (2) (d) and substituting the following paragraph:
 - “(d) does not change the kind of development approved but only the activity permitted.”; and
- (e) by omitting from subsection (3) “Minister” and substituting “relevant authority”.

Corrections

71. Section 248 of the Principal Act is amended by omitting “Minister is satisfied that an approval contains a formal error, the Minister” and substituting “relevant authority who gave an approval is satisfied that the approval contains a formal error, the authority”.

Approval—when takes effect

72. Section 249 of the Principal Act is amended by omitting “The approval of an application by the Minister, or by the Executive under section 240 or 241,” and substituting “Subject to subsection 230 (4) and paragraph 245 (3) (d), the approval of an application by the relevant authority”.

Substitution

73. Section 250 of the Principal Act is repealed and the following section substituted:

Execution of approvals for variations of leases

“250. Subject to Division 3 of Part V, where an approval to undertake a development takes effect pursuant to section 249, being a development that consists of or includes a variation of a lease, the Executive shall cause the lease to be varied in accordance with the terms of the approval.”.

Expiration of approvals

74. Section 251 of the Principal Act is amended—

- (a) by omitting from subsection (1) “conduct a controlled activity (other than a controlled activity specified in item 2 or 3 of Schedule 4)” and substituting “undertake a development (other than a development that consists wholly of a variation of a lease)”;
- (b) by omitting from paragraphs (1) (a) and (b) “activity” (wherever occurring) and substituting “development”; and
- (c) by omitting from paragraph (1) (c) “an activity or any stage of an activity—the activity or any stage of the activity” and substituting “the development or any stage of the development—the development or stage of development”.

Extension of time

75. Section 252 of the Principal Act is amended—

- (a) by omitting from subsection (1) “conduct a controlled activity (other than an activity specified in item 2 or 3 of Schedule 4)” and substituting “undertake a development (other than a development that consists wholly of a variation of a lease)”;
- (b) by omitting from subsection (1) “the activity” (wherever occurring) and substituting “the development”; and
- (c) by omitting from subsection (2) all the words after “which” and substituting “the development, or the stage of the development, is to be completed.”.

Repeal

76. Section 254 of the Principal Act is repealed.

Application for order

77. Section 256 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “was,” after “activity”;
- (b) by omitting subsection (2) and substituting the following subsection:
 - “(2) An application under subsection (1) shall—
 - (a) be in a form made available by the Minister;
 - (b) set out, or be accompanied by, such information relating to the application as is required by the form; and
 - (c) set out the grounds on which the order is sought.”; and

(c) by omitting subparagraphs (5) (b) (i) to (v) (inclusive) and substituting the following subparagraphs:

- “(i) not to commence a development without approval;
- (ii) to stop carrying out a development without approval;
- (iii) to stop, or not commence, a controlled activity other than a development;
- (iv) to comply with the terms of an approval to undertake a development;
- (v) to stop undertaking a development otherwise than in accordance with the conditions subject to which an approval to conduct the development was given;
- (vi) to demolish a building or structure, or a part of a building or structure, that has been constructed or erected without approval or permission required by an Act or regulations;
- (vii) to demolish a building or structure, or a part of a building or structure, that encroaches onto, over or under unleased Territory Land without approval granted under an Act;
- (viii) to restore any land, building or structure that has been altered without approval or permission required by an Act or regulations;
- (ix) to replace with an identical building or structure any building or structure that has been demolished without approval or permission required by an Act or regulations;
- (x) to clean-up a leasehold;
- (xi) to prune in a manner specified in the order so much of a tree, sapling, plant or shrub as overhangs a public place; or
- (xii) to cease carrying out an activity that is likely to cause soil erosion or that involves—
 - (A) destroying, damaging, removing or otherwise interfering with vegetation (living or dead); or
 - (B) removing or otherwise interfering with soil;that is—
 - (C) between the banks of a watercourse;
 - (D) within 20 metres of a bank of a watercourse; or
 - (E) on land having a slope of more than 18° from the horizontal.”.

Insertion

78. After section 274 of the Principal Act the following Division is inserted:

“Division 4A—Commissioner for Land and Planning

Commissioner for Land and Planning

“274A. (1) There shall be a Commissioner for Land and Planning appointed by the Minister by instrument.

“(2) The Commissioner 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 by instrument.

“(3) Notwithstanding paragraph 6 (a) of the *Statutory Appointments Act 1994*, sections 4 and 5 of that Act apply to the appointment of a public servant as Commissioner of Land and Planning.

Term of office

“274B. Subject to this Act, the Commissioner holds office for the period (not exceeding 5 years) specified in the instrument of appointment, but is eligible for reappointment.

Remuneration and allowances

“274C. The Commissioner shall be paid the remuneration and allowances determined by the Remuneration Tribunal under subsection 10 (1) of the *Remuneration Tribunal Act 1995*.

Leave of absence

“274D. The Minister may grant leave of absence to the Commissioner upon terms and conditions as to remuneration or otherwise determined by the Minister by instrument.

Acting appointments

“274E. (1) The Minister may, in writing, appoint a person to act as Commissioner—

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is for any reason unable to perform the functions of the office.

“(2) A person appointed to act as the Commissioner during a vacancy in the office of Commissioner shall not so act continuously for more than 12 months.

“(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

Resignation

“274F. The Commissioner may resign from office by signed notice given to the Minister.

Suspension and removal of Commissioner

“274G. (1) The Executive may remove the Commissioner from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Executive by the Legislative Assembly.

“(2) The Executive may suspend the Commissioner from office on the ground of misbehaviour or physical or mental incapacity.

“(3) Where the Executive suspends the Commissioner from office, the Minister shall cause a statement of the grounds 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 Commissioner should be removed from office and, if the Legislative Assembly so passes such a resolution, the Executive shall remove the Commissioner 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) If the Commissioner 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 Commissioner from office.

“(7) The Commissioner shall not be removed or suspended from office except as provided by this section.

“(8) The suspension of the Commissioner from office does not affect any entitlement of the Commissioner to be paid remuneration and allowances.

Retirement

“274H. The Minister may, by instrument and with the consent of the Commissioner retire the Commissioner on the grounds of physical or mental incapacity from the date and upon any terms and conditions specified in the instrument.

Delegation

“274I. The Commissioner may, by signed instrument, delegate to a public servant all or any of his or her powers under this Act.

Protection from suit

“274J. Neither the Commissioner, a person to whom the Commissioner has delegated any or all of his or her powers, nor a person acting under the Commissioner’s direction or authority is liable to an action, suit or proceeding in relation to any act done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred by this Act.”.

Review of decisions

79. Section 275 of the Principal Act is amended—

- (a) by omitting paragraphs (1) (b), (c), (e) and (g);
- (b) by omitting subsection (2) and substituting the following subsection:

“(2) Where the relevant authority makes a decision—

- (a) refusing to approve an application under section 230;
- (b) refusing to grant an extension of a period under subsection 233 (3);
- (c) giving an approval subject to conditions under subsection 245 (1); or
- (d) refusing to amend an approval under subsection 247 (2);

the relevant authority shall cause notice of the decision to be given to a person whose interests are affected by the decision.”; and

- (c) by omitting subsection (3) and substituting the following subsection:

“(3) Where—

- (a) an approval that is in force contains a condition that a development is to be carried out to the satisfaction of a specified person or body; and

- (b) the specified person or body makes a decision that the development has not been carried out to the satisfaction of the person or body;

the person or body shall cause notice of the decision to be given to the applicant to whom the decision relates.”.

Review—objectors, third parties

80. Section 276 of the Principal Act is amended—

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

“(1) A person may apply to the Administrative Appeals Tribunal for a review of a decision of the relevant authority to approve an application under section 230 or 245 if—

- (a) the person making the application is—
 - (i) a person who objected under section 237; or
 - (ii) a person who the Administrative Appeals Tribunal has reasonable grounds for believing was, in the circumstances, unable to object within the prescribed period;
- (b) the rights of the person are substantially and adversely affected by the decision; and
- (c) the application is made within 28 days after the day on which the person was notified of the decision.”;

- (b) by inserting in subsection (4) “substantially and adversely” before “affected”;

- (c) by omitting subsection (5) and substituting the following subsection:

“(5) A person is not entitled to make an application under this section if the relevant authority has issued a certificate that an Environmental Impact Statement made, or an Inquiry conducted, under Part IV has substantially dealt with the matters forming the basis of the relevant authority’s decision to give the applicant approval to undertake the development.”; and

- (d) by omitting from subsection (7) “paragraph (5) (a)” and substituting “subsection (5)”.

Notification of objectors

81. Section 278 of the Principal Act is amended by omitting from subsection (1) all the words after “so applied” and substituting “to each person who objected under section 237 to the application in relation to which the decision was made.”.

Notification of applicants

82. Section 279 of the Principal Act is amended by omitting from the definition of “objector” in subsection (3) “paragraph 276 (1) (c) or (d)” and substituting “subparagraph 276 (1) (a) (i) or (ii).”.

Regulations

83. Section 282 of the Principal Act is amended—

(a) by inserting after paragraph (d) the following paragraph:

“(da) exempting the carrying out of a specified development, or a development included in a specified class of developments, either absolutely or subject to conditions, from the application of all or any of the provisions of this Part, or the regulations;” and

(b) by omitting from paragraph (f) “, a concurring authority”.

Review of decisions

84. Section 282A of the Principal Act is amended—

(a) by inserting in paragraph (1) (g) “of compliance” after “certificate”;

(b) by omitting from paragraph (1) (g) “or”;

(c) by inserting after paragraph (1) (g) the following paragraphs:

“(ga) on application for a certificate of compliance under subsection 179 (1)—issuing a certificate of compliance that a building and development provision of a lease has been partially complied with under subsection 179 (1A);

(gb) refusing to issue a certificate of compliance under subsection 179 (1A);

(gc) issuing a certificate of compliance under subsection 179 (1A) subject to a condition under subsection 179 (1B);”;

(d) by inserting after paragraph (1) (h) the following paragraphs:

“(i) determining a change of use charge for the variation of a lease under subsection 184A (2);

(j) refusing to remit a change of use charge for the variation of a lease under subsection 184C (1);

(k) remitting a change of use charge for the variation of a lease by an amount less than that applied for under subsection 184C (1);

(l) increasing a change of use charge for the variation of a lease under subsection 184C (3);

- (m) reappraising the rent payable under a lease under subsection 184D (2);
 - (n) determining an amount for the variation of a rental lease to reduce the rent payable to a nominal rent under paragraph 186 (1) (d);
 - (o) determining a change of use charge for a consolidation or subdivision under subsection 187A (2);
 - (p) refusing to remit a change of use charge for a consolidation or subdivision under subsection 187C (1);
 - (q) remitting a change of use charge for a consolidation or subdivision by an amount less than that applied for under subsection 187C (1); or
 - (r) increasing a change of use charge for a consolidation or subdivision under subsection 187C (3);”;
- (e) by inserting in subsection (1) “substantially and adversely” before “affected”;
- (f) by inserting in paragraph (2) (e) “, 171A” after “171”;
- (g) by omitting paragraph (2) (f);
- (h) by inserting in subsections (2) and (3) “substantially and adversely” before “affected”; and
- (i) by omitting paragraph (4) (a).

Repeal of Schedule

85. Schedule 4 to the Principal Act is repealed.

Schedule 5

86. Schedule 5 to the Principal Act is amended—

- (a) by omitting items 2 and 3; and
- (b) by omitting items 5, 6 and 7 and substituting the following items:

5	Undertaking a development	\$5,000
6	Having a building or structure that was constructed or erected without approval required by—	\$5,000
	(a) Division 2 of Part VI of this Act; or	
	(b) the <i>Buildings (Design and Siting) Act 1964</i> .	

PART III—AMENDMENTS TO OTHER LEGISLATION

Division 1—Preliminary

Interpretation

87. In this Part—

“commencement day”, in relation to a provision in this Part, means the day on which the provision commences under section 2 of this Act.

Division 2—Administrative Decisions (Judicial Review) Act 1989

Interpretation

88. (1) Section 3 of the *Administrative Decisions (Judicial Review) Act 1989* is amended—

- (a) by adding at the end of subparagraph (4) (a) (i) “and”;
- (b) by omitting from subparagraph (4) (a) (ii) “and”;
- (c) by omitting subparagraph (4) (a) (iii); and
- (d) by omitting from paragraph (4) (b) all the words after “reference” (last occurring) and substituting “to a person whose interests are, or would be, adversely affected by the conduct or failure; and”.

(2) If, immediately before the commencement day, an application to the Supreme Court had been made under section 5 or 6 of the *Administrative Decisions (Judicial Review) Act 1989* but the application had not been finally dealt with by the Court, section 3 of that Act as in force at that time continues to apply in relation to the application as if this Act had not been passed.

Division 3—Building Act 1972

Interpretation

89. In this Division—

“Principal Act” means the *Building Act 1972*.

Interpretation

90. Section 5 of the Principal Act is amended—

- (a) by omitting from the definition of “storey” in subsection (1) “*Land (Planning and Environment) Act 1991*” and substituting “Land Act”; and
- (b) by inserting the following definition in subsection (1):
 - “ ‘Land Act’ means the *Land (Planning and Environment) Act 1991*.”

Application

91. Section 6 of the Principal Act is amended by omitting from subsection (1) “the design or siting of a building” and substituting “land use”.

Grant of building permits

92. (1) Section 31 of the Principal Act is amended by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) where the building work is or forms part of a development requiring approval under Division 2 of Part VI of the Land Act—unless the development has been so approved; or”.

(2) If, before the commencement day, plans had been approved under section 5 of the *Buildings (Design and Siting) Act 1964*, paragraph 31 (2) (a) of the Principal Act as in force immediately before that day continues to apply in relation to those plans as if this Act had not been passed.

Application for building permits—external design and siting

93. (1) Section 38 of the Principal Act is amended by omitting all the words after “except” and substituting “where—

- (a) the Building Controller is satisfied that it is necessary to do so in order to prevent a contravention of a provision of this Act or of another law; or
- (b) the building work forms part of a development which is not required to be approved under Division 2 of Part VI of the Land Act.”.

(2) If, immediately before the commencement day, an application for a building permit had been made in accordance with section 35 of the Principal Act, but no decision had been made in relation to the application, section 38 of the Principal Act as amended by subsection (1) of this section applies in relation to the application.

Stop notices

94. (1) Section 43 of the Principal Act is amended by omitting paragraph (1) (f) and substituting the following paragraphs:

- “(ea) in the case of building work forming part of a development requiring approval under Division 2 of Part VI of the Land Act—without that approval;
- (f) in the case of building work forming part of a development approved under Division 2 of Part VI of the Land Act—contrary to that approval, or a condition of that approval;”.

(2) If, before the commencement day, building work was being carried out without the approval or contrary to the approval of the Territory Planning Authority, or a condition of that approval, given under the *Buildings (Design and Siting) Act 1964*, the Building Controller may give a notice in relation to that work under subsection 43 (1) of the Principal Act as in force immediately before that day as if this Act had not been passed.

Notice to carry out building work

95. (1) Section 46 of the Principal Act is amended by omitting paragraph (1) (e) and substituting the following paragraphs:

- “(da) building work forming part of a development requiring approval under Division 2 of Part VI of the Land Act has been carried out without that approval;
- (e) building work forming part of a development approved under Division 2 of Part VI of the Land Act has been carried out contrary to that approval, or a condition of that approval;”.

(2) If, before the commencement day, building work had been carried out without the approval or contrary to the approval of the Territory Planning Authority, or a condition of that approval, given under the *Buildings (Design and Siting) Act 1964*, the Building Controller may give a notice in relation to that work under subsection 46 (1) of the Principal Act as in force immediately before that day as if this Act had not been passed.

Review by Administrative Appeals Tribunal

96. (1) Section 60 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) The Administrative Appeals Tribunal shall not in respect of a proposed building, or a building as proposed to be altered, forming part of a development within the meaning of Division 2 of Part VI of the Land Act—

- (a) vary a decision issuing a stop notice under section 43 or a notice under subsection 44 (1) or (3) or 46 (1), or substitute a decision for such a decision it has set aside, in a manner that would be contrary to an approval of the development under that Division; or
- (b) vary a decision issuing a notice under subsection 44 (3), or substitute a decision for such a decision it has set aside, unless the development has been approved under that Division.”.

(2) If, before the commencement day, a person had a right to apply to the Administrative Appeals Tribunal for a review of a decision referred to in paragraph 60 (2) (a) or (b) of the Principal Act or proceedings were pending before the Tribunal in respect of such a decision, that paragraph as in force immediately before that day applies in relation to that application or continues to apply in relation to those proceedings, as the case may be, as if this Act had not been passed.

Division 4—Electoral Act 1992

Redistribution Committees

97. Section 39 of the *Electoral Act 1992* is amended by omitting paragraph (3) (b) and substituting the following paragraph:

“(b) the Australian Capital Territory Planning Authority;”.

Division 5—Gas Act 1992

Application of the Land Act

98. Section 76 of the *Gas Act 1992* is amended—

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

“(1) Gas system construction is a development for the purposes of Part VI of the Land Act.”; and

(b) by omitting subsection (2).

Division 6—Land Titles (Unit Titles) Act 1970

Interpretation

99. In this Division—

“Principal Act” means the *Land Titles (Unit Titles) Act 1970*.

Effect of cancellation of units plan

100. Section 13 of the Principal Act is amended by omitting from subsection (1) “by paragraph (d) of subsection (1) of section 98” and substituting “by virtue of paragraph 98 (1A) (a)”.

Duties of Registrar-General upon registration of order

101. Section 14 of the Principal Act is amended by omitting from paragraph (1) (c) “by paragraph (d) of subsection (1) of section 98” and substituting “by virtue of paragraph 98 (1A) (a)”.

Substitution

102. (1) Section 25 of the Principal Act is repealed and the following section substituted:

Registration of instruments granting further leases

“25. Where the Executive grants further leases under section 171, 171A or 172 of the *Land (Planning and Environment) Act 1991* of the units and the common property forming part of a registered units plan, upon lodgment of the instruments granting the leases, the Registrar-General shall—

- (a) register the instruments; and
- (b) endorse on the units plan such memorials as are necessary to show that the further leases have been granted, and the date of expiry of the term of the further leases.”.

(2) If, immediately before the commencement day, an instrument had been executed under section 108 of the *Unit Titles Act 1970* extending the term of the leases of the units and common property under a units plan, but the instrument had not been registered under section 25 of the Principal Act, section 25 of the Principal Act as in force immediately before that day continues to apply in relation to the instrument as if this Act had not been passed.

Division 7—Lands Acquisition Act 1994

Acquisitions to be in accordance with Act

103. Section 18 of the *Lands Acquisition Act 1994* is amended by inserting in subsection (3) “all or” before “part”.

Division 8—Remuneration Tribunal Act 1995

Inquiries in relation to holders of certain offices

104. Section 10 of the *Remuneration Tribunal Act 1995* is amended by omitting paragraph (1) (q) and substituting the following paragraph:

- “(q) the Commissioner for Land and Planning;”.

Division 9—Unit Titles Act 1970

Interpretation

105. In this Division—

“Principal Act” means the *Unit Titles Act 1970*.

Other definitions

106. Section 5 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of the definition of “lease” all the words after “referred to in” and substituting “paragraph 25 (1) (b) or subsection 110 (2)”;
- (b) by omitting from paragraph (b) of the definition of “lease” all the words after “referred to in” and substituting “paragraph 25 (1) (c)”;
- (c) by omitting from paragraph (c) of the definition of “lease” all the words after “referred to in” and substituting “subsection 98 (1A)”.

Proposals for subdivision

107. Section 11 of the Principal Act is amended by omitting from subsection (1) “paragraph (d) of subsection (1) of section 98” and substituting “subsection 98 (1A)”.

Approval of unit titles application

108. (1) Section 16 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (c) “the preceding provisions of this Part” and substituting “sections 10 to 15 (inclusive)”;
- (b) by omitting from paragraph (1) (d) “in the case of proposals that have been submitted to the Minister after the commencement of the *Unit Titles Act 1975*,”;
- (c) by omitting from paragraph (1) (d) “and”;
- (d) by inserting after paragraph (1) (d) the following paragraph:
 - “(da) in the case of a parcel of land currently leased for rural purposes, or purposes including rural purposes—
 - (i) the Minister has determined criteria under subsection (2A); and
 - (ii) the proposals are in accordance with those criteria; and”;
- (e) by inserting after subsection (2) the following subsection:
 - “(2A) A determination of the Minister under subparagraph (1) (da) (i) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

(2) If, immediately before the commencement day, an application had been made in accordance with section 11 of the Principal Act for the approval of proposals for the subdivision of a parcel of land under the Principal Act, being land leased for rural purposes, or for purposes including rural purposes, but no decision had been made in relation to the application, section 16 of the Principal Act as in force immediately before that day continues to apply in relation to the application as if this Act had not been made.

Court order for cancellation of units plan

109. (1) Section 97 of the Principal Act is amended by adding at the end the following subsection:

“(8) For the purposes of paragraph 98 (1A) (c), a final order may include a declaration of provisions which are to govern the relevant new lease under subsection 98 (1A) where, on an application made for the purpose, having regard to the rights and interests of all persons having estates or interests (whether registered or not) in the leases of the units, the Court is satisfied that it is just and equitable to do so in order to take account of any variation of such a lease made or applied for since it was granted.”.

(2) If, immediately before the commencement day, proceedings had been commenced in the Court under section 97 of the Principal Act but had not been concluded, that section as amended by subsection (1) applies to those proceedings.

Effect of cancellation of units plan

110. (1) Section 98 of the Principal Act is amended—

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

“(d) there is deemed to be a new lease over that parcel as referred to in subsection (1A).

“(1A) The new lease—

(a) is held by—

(i) the proprietors of the units immediately before registration of the order as tenants in common in undivided shares proportional to their former unit entitlement; or

(ii) if there was a single proprietor of all the units immediately before the registration of the order—by that proprietor;

(b) expires on the day on which each of the leases of the units, and the lease of the common property, would have

expired if it were not for the cancellation of the units plan; and

- (c) is otherwise governed by the provisions to which the initial lease was subject immediately before the registration of the units plan, subject to any declaration of the Court under subsection 97 (8).”;
- (b) by omitting from subsection (2) “paragraph (d) of the last preceding subsection” and substituting “paragraph (1A) (a)”;
- (c) by omitting from subsection (2) “two” (wherever occurring) and substituting “2”;
- (d) by omitting from subsection (2) “by that paragraph” and substituting “by virtue of that paragraph”;
- (e) by omitting subsection (4);
- (f) by omitting from subsection (5) “under paragraph (d) of subsection (1) of this section” and substituting “by virtue of paragraph (1A) (a)”;
- (g) by adding at the end the following subsection:

“(6) In this section—

‘initial lease’, in relation to a units plan, means the lease that was determined under section 25 on the registration of the units plan.”.

(2) If, before the commencement day, an order had been made under section 97 of the Principal Act for the cancellation of the registration of a units plan, section 98 of the Principal Act as in force immediately before that day continues to apply in relation to the land formerly held under the units plan as if this Act had not been made.

(3) If, before the commencement day, a lease over a parcel of land had arisen by virtue of paragraph 98 (1) (d) of the Principal Act, a reference in the Principal Act or any other law of the Territory to a lease as referred to in subsection 98 (1A) of the Principal Act, or to an estate in land vested by virtue of that subsection, is to be read as including a reference to the first-mentioned lease, or to an estate in land vested by virtue of paragraph 98 (1) (d) of the Principal Act (as in force before the commencement day), as the case requires.

Expiry of terms of leases

111. Section 105 of the Principal Act is amended by adding at the end the following subsection:

“(2) The reference in subsection (1) to section 108 of this Act is a reference to that section as in force before its repeal by the *Land (Planning*

Land (Planning and Environment) (Amendment) (No. 3) No. 85, 1996

and Environment) (Amendment) Act (No. 3) 1996, or as continued in force afterwards by the operation of that Act.”.

Repeal

112. (1) Section 108 of the Principal Act is repealed.

(2) If, immediately before the commencement day, an application had been made in accordance with section 108 of the Principal Act for the extension of the term of leases of units and common property, but no decision had been made in relation to that application, that section as in force immediately before that day continues to apply in relation to the application as if this Act had not been made.

PART IV—REPEAL OF BUILDINGS (DESIGN AND SITING) ACT 1964

Repeal

113. The following Acts are repealed:

Buildings (Design and Siting) Act 1964

Buildings (Design and Siting) Act 1967

Buildings (Design and Siting) Act 1969

Buildings (Design and Siting) Act 1970

Buildings (Design and Siting) Act (No. 2) 1970

Buildings (Design and Siting) Act 1972

Buildings (Design and Siting) Act 1973

Buildings (Design and Siting) (Amendment) Act 1992

Buildings (Design and Siting) (Amendment) Act (No. 2) 1992

Buildings (Design and Siting) (Amendment) Act 1993

Buildings (Design and Siting) (Amendment) Act 1994

PART V—TRANSITIONAL

Interpretation

114. (1) In this Part—

“Principal Act” means the *Land (Planning and Environment) Act 1991*;

“commencement day”, in relation to a provision in this Part, means the day on which the provision commences under section 2 of this Act.

(2) A reference in this Part to a provision of Part VI of the Principal Act as in force at any time before the commencement day includes a reference to that provision as applied at that time by section 5 of the *Buildings (Design and Siting) Act 1964*.

Variation of the Territory Plan

115. (1) If, before the commencement day, notice had been given of a draft Plan variation under subsection 19 (1) of the Principal Act, sections 9, 19, 21, 22 and 26 of the Principal Act as in force immediately before that day continue to apply in relation to the draft Plan variation as if this Act had not been made.

(2) If, before the commencement day, notice had been given of a draft Plan variation under subsection 19 (1) of the Principal Act, section 29 of the Principal Act as in force immediately before that day continues to apply in relation to any corresponding Plan variation as if this Act had not been made.

Change in nature of the Authority

116. (1) The amendments to the Principal Act effected by sections 19 and 20 of this Act are not to be taken to affect the continuing validity on or after the commencement day of—

- (a) any delegation by the Authority under section 40 of the Principal Act executed before that day; or
- (b) anything done by or in relation to the Authority before that day.

(2) Section 42 of the Principal Act as in force immediately before the commencement day continues to apply in relation to anything done or omitted to be done by or in relation to the Authority before that day as if this Act had not been made.

(3) The amendment to the Principal Act effected by section 23 of this Act is not to be taken to affect the continuing validity on or after the commencement day of anything done by or in relation to the Chief Planner or the Authority before that day.

Preliminary assessments

117. If, before the commencement day, a preliminary assessment had been prepared pursuant to a notice given under section 113 of the Principal Act, sections 116 and 117 of the Principal Act as in force immediately before that day continue to apply in relation to the preliminary assessment as if this Act had not been made.

Grant of further leases

118. If, immediately before the commencement day, an application had been made in accordance with section 171 or 172 of the Principal Act for the grant of a further lease of Territory Land, but the Executive had not granted the applicant a further lease—

- (a) in the case of an application for the grant of a further residential lease—section 171 as amended by this Act applies in relation to the grant of the lease;

- (b) in the case of an application for the grant of a rural lease—section 171A as amended by this Act applies in relation to the grant of the lease; or
- (c) in any other case—section 172 as amended by this Act applies in relation to the grant of the lease.

Lessee's rights in respect of improvements

119. If, before the commencement day, a lease of Territory Land had expired or been terminated or surrendered, sections 173 and 174 of the Principal Act as in force immediately before that day continue to apply in relation to the expiry, termination or surrender as if this Act had not been made.

Use of land for leased purpose

120. (1) If, before the commencement day, the use of Territory Land for a home business had been approved under a law of the Territory, that approval is to be taken to be an approval for the purposes of paragraph 175 (2) (b) of the Principal Act as amended by this Act.

(2) Section 175 of the Principal Act as in force at any time before the commencement day is not to be taken to have rendered unlawful the use of Territory Land for a home business where that use was approved under the Principal Act as so in force.

Certificates of compliance

121. If, immediately before the commencement day, an application had been made in accordance with subsection 179 (1) of the Principal Act for a certificate under section 179 of the Principal Act, but no decision had been made in relation to the application, that section as amended by this Act applies in relation to the application.

Lease variations

122. (1) If, before the commencement day, the variation of a lease of Territory Land had been approved under Part VI of the Principal Act but the variation had not been executed—

- (a) section 184 of the Principal Act as in force immediately before that day continues to apply in relation to the execution of the variation as if this Act had not been made;
- (b) sections 184A, 184C and 184D of the Principal Act as amended by this Act do not apply in relation to the execution of the variation; and
- (c) in the case of a variation of a rental lease to reduce the rent payable to a nominal rent—section 186 of the Principal Act as in

force immediately before that day continues to apply in relation to the execution of the variation as if this Act had not been made.

(2) In subsection (1), a reference to the variation of a lease includes a reference to a surrender of a lease and the grant of a new lease as referred to in subsection 159 (3) of the Principal Act as in force immediately before the commencement day.

Termination of leases and licences

123. If, before the commencement day, a notice of termination had been served on a lessee, section 188 of the Principal Act as in force immediately before that day continues to apply in relation to the notice as if this Act had not been made.

Applications for approval to conduct controlled activities

124. (1) In this section—

“transitional application” means an application for approval to conduct a controlled activity made in accordance with section 226 of the Principal Act in relation to which no decision had been made, or had been deemed to have been made, immediately before the commencement day.

(2) The Principal Act as amended by this Act applies in relation to a transitional application, and any decision made in relation to a transitional application, as if—

- (a) the application were an application for approval to undertake a development;
- (b) the reference to the prescribed period in subsection 230 (2) of the Principal Act as amended by this Act were a reference to the period prescribed in relation to the application under subsection 230 (4) of the Principal Act as in force on the day the application was made, as extended (if at all) pursuant to the Land (Planning and Environment) Regulations;
- (c) subsection 230 (3) did not apply in relation to the application; and
- (d) anything done or omitted to be done in relation to the application before the commencement day had been done or omitted to be done (as the case may be) in relation to the application as an application for approval to undertake a development.

(3) Notwithstanding subsection 230 (2) of the Principal Act as it applies to a transitional application, the relevant authority may approve a transitional application at any time after the expiration of the period applying to the application by virtue of paragraph (2) (b) of this section until the expiration of the last day on which application may be made to the

Administrative Appeals Tribunal for a review of a decision to refuse to approve the application.

(4) If, immediately before the commencement day, an application for approval to conduct a controlled activity under section 226 of the Principal Act had been refused, or had been deemed to have been refused, subsection 230 (5) of the Principal Act as in force immediately before the commencement day continues to apply in relation to the application as if this Act had not been made.

Register of applications, approvals and orders

125. Section 227 of the Principal Act applies on and after the commencement day as if a reference in that section to an application under section 226 of the Principal Act included a reference to an application for approval to conduct a controlled activity made under section 226 of the Principal Act before that day.

Approvals to conduct controlled activities

126. For the purposes of Part VI of the Principal Act as amended by this Act, an approval to conduct a controlled activity given under section 230, 240 or 241 of the Principal Act that had not expired or been revoked immediately before the commencement day is, on and after that day, to be taken to be an approval to undertake a development.

Orders made before commencement

127. If, before the commencement day, an order had been made under section 256 of the Principal Act, the Principal Act as in force immediately before that day continues to apply in relation to the order as if this Act had not been made.

Review of decisions (approvals and orders)—general

128. If, before the commencement day, the Minister made a decision—
- (a) refusing to approve an application under section 230 of the Principal Act;
 - (b) refusing to grant an extension of a period under subsection 233 (3) of the Principal Act;
 - (c) giving an approval subject to conditions under subsection 245 (1) of the Principal Act; or
 - (d) refusing to amend an approval under subsection 247 (2) of the Principal Act;

section 275 of the Principal Act as in force immediately before that day continues to apply in relation to the decision as if this Act had not been made.

Review of decisions (approvals and orders)—objectors and third parties

129. If, before the commencement day—

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

section 276 of the Principal Act as in force immediately before that day continues to apply in relation to the decision as if this Act had not been made.

Review of decisions (general)

130. (1) If the Environment Minister—

- (a) before the commencement day—made a decision in relation to a preliminary assessment under section 117 of the Principal Act; or
- (b) on or after the commencement day—makes a decision in relation to a preliminary assessment under that section as continued in force by virtue of section 117 of this Act;

section 282A of the Principal Act as in force immediately before that day continues to apply in relation to the decision as if this Act had not been made.

(2) If the Executive—

- (a) before the commencement day—made a decision to determine an amount under section 184 of the Principal Act; or
- (b) on or after the commencement day—makes a decision to determine an amount under section 184 of the Principal Act as continued in force by virtue of section 122 of this Act;

section 282A of the Principal Act as in force immediately before that day continues to apply in relation to the decision as if this Act had not been made.

NOTES

Principal Act

1. Reprinted as at 28 February 1995. See also Acts Nos. 20, 21, 25, 54 and 56, 1995; Nos. 39, 62 and 71, 1996.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Land (Planning and Environment) (Amendment) (No. 3) No. 85, 1996

[Presentation speech made in Assembly on 21 November 1996]

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