

Australian Capital Territory

Planning and Land Act 2002

A2002-55

Republication No 3

Effective: 2 July 2004 – 1 June 2005

Republication date: 2 July 2004

Last amendment made by A2004-9
(republication for commenced expiry)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Planning and Land Act 2002* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 July 2004. It also includes any amendment, repeal or expiry affecting the republished law to 2 July 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Planning and Land Act 2002

Contents

	Page
Chapter 1	Preliminary
1	Name of Act 2
3	Dictionary 2
4	Notes 2
5	Offences against Act—application of Criminal Code etc 2
6	Object of Act 3
Chapter 2	The authority and chief planning executive
Part 2.1	The authority
7	Establishment of authority 4
8	Territory bound by actions of authority 4

R3
02/07/04

Planning and Land Act 2002
Effective: 02/07/04-01/06/05

contents 1

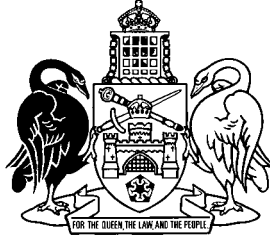
	Page
Part 2.2	Functions of authority
9	Authority functions 5
10	Authority to comply with directions 6
11	Asking council's advice 7
Part 2.3	Operations of authority
12	Ministerial directions to authority 8
13	Assembly may recommend directions to authority 9
14	Statement of planning intent 9
15	Provision of planning services to others—ministerial approval 10
16	Reports by authority to Minister 10
17	Authority's annual report 10
18	Delegations by authority 11
Part 2.4	The chief planning executive
19	Appointment of chief planning executive 12
20	Chief planning executive's employment conditions 12
21	Functions of chief planning executive 12
22	Suspension or ending of chief planning executive's appointment 13
Part 2.5	Authority staff and consultants
23	Authority staff 14
24	Authority consultants 14
Chapter 3	The council
Part 3.1	Establishment, constitution and functions
25	Establishment of council 15
26	Constitution of council 15
27	Functions of council 16
Part 3.2	Council membership
28	Council members 17
29	Ending of council members' appointments 18

	Page
30	18
31	19
32	19
33	19
34	20
35	20
36	20
37	21
Chapter 4	The land agency
Part 4.1	Establishment and functions of land agency
38	23
39	23
40	24
41	24
42	25
43	26
Part 4.2	Management of land agency
Division 4.2.1	Introductory concepts
44	28
Division 4.2.2	Land agency business plans
45	28
46	29
Division 4.2.3	Land agency financial provisions
47	29
48	29
49	30
50	31
Division 4.2.4	General
51	31
R3	Planning and Land Act 2002
02/07/04	Effective: 02/07/04-01/06/05
	contents 3

Contents

	Page
52	Ministerial directions to land agency 32
53	Territory to compensate land agency for cost of complying with directions 32
54	Committees 32
55	Land agency's annual report 33
56	Delegation by land agency 33
Part 4.3 Membership of land agency and its board	
57	Constitution of land agency 34
58	Land agency board 34
59	Appointment of land agency board members 35
60	Honesty, care and diligence of land agency board members 35
61	Ending of land agency board members' appointments 36
Part 4.4 Meetings of land agency board	
62	Calling land agency board meetings 37
63	Procedure at land agency board meetings 37
64	Land agency board resolutions 37
65	Minimum number for land agency board meetings 38
66	Voting at land agency board meetings 38
67	Minutes of land agency board proceedings 38
68	Disclosure of interests by land agency board members 38
69	Reporting of disclosed interests to Minister 39
Part 4.5 Land agency chief executive officer, staff and consultants	
Division 4.5.1 Land agency chief executive officer	
70	Appointment of chief executive officer 41
71	Functions of chief executive officer 41
Division 4.5.2 Land agency staff and consultants	
72	Land agency staff 42
73	Land agency consultants 42

	Page
Chapter 5	
Miscellaneous	
74	43
75	43
76	45
77	45
Dictionary	46
Endnotes	
1	48
2	48
3	49
4	49
5	51



Australian Capital Territory

Planning and Land Act 2002

An Act to provide for planning and the development of land, and for other purposes

Chapter 1 Preliminary

1 Name of Act

This Act is the Planning and Land Act 2002.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition ‘*development*—see the *Land (Planning and Land Management) Act 1991*, section 222 (Definitions for pt 6).’ means that development is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Object of Act

The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT—

- (a) consistently with the social, environmental and economic aspirations of the people of the ACT; and
- (b) in accordance with sound financial principles.

Part 2.2 Functions of authority

9 Authority functions

- (1) The authority has the following functions:
- (a) to administer the Territory plan;
 - (b) to continually assess the Territory plan and propose amendments as necessary;
 - (c) to plan and regulate the development of land;
 - (d) to advise on planning and land policy, including the broad spatial planning framework for the ACT;
 - (e) to maintain the digital cadastral database;
 - (f) to make available land information;
 - (g) to grant, administer, vary and end leases on behalf of the Executive;

Note Under the *Land (Planning and Environment) Act 1991*, s 160B, the planning and land authority is authorised to grant, on behalf of the Executive, leases the Executive may grant on behalf of the Commonwealth.

- (h) to grant licences over unleased Territory land;
- (i) to decide applications for approval to undertake development;
- (j) to regulate the building industry;
- (k) to make orders under the *Land (Planning and Environment) Act 1991*, part 6 (Approvals and orders);

- (l) to provide planning services, including services to entities outside the ACT;

Note The provision of planning services to somebody other than the Territory is subject to s 15 (Provision of planning services to others—ministerial approval).

- (m) to review its own decisions;
- (n) to provide administrative support and facilities for the council;
- (o) to ensure community consultation and participation in planning decisions;
- (p) to promote public education and understanding of the planning process, including by providing easily accessible public information and documentation on planning and land use.

- (2) The authority may exercise any other function given to the authority under this Act, another Territory law or a Commonwealth law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196 and dict, pt 1, def of *entity*).

- (3) The authority must exercise its functions—

- (a) in a way that has regard to sustainable development; and
- (b) taking into consideration the statement of planning intent.

Note For the meaning of *sustainable development*, see s 74. The statement of planning intent is dealt with in s 14.

- (4) In this section:

digital cadastral database—see the *Districts Act 2002*, section 17.

10 Authority to comply with directions

The authority must comply with any directions given to the authority under this Act or another Territory law.

Note The authority may be given directions by the Minister under s 12.

11 Asking council's advice

- (1) The authority must ask for, and consider, the council's advice—
 - (a) before exercising a function prescribed under the regulations;
or
 - (b) before exercising a function in circumstances prescribed under the regulations.
- (2) The authority may ask for the council's advice in relation to the exercise of any other function.

Part 2.3 **Operations of authority**

12 **Ministerial directions to authority**

- (1) The Minister may give a written direction to the authority—
 - (a) about the general policies the authority must follow; or
 - (b) requiring the authority to revise the Territory plan, or a provision of the plan.
- (2) Before giving a direction, the Minister must—
 - (a) tell the authority about the proposed direction; and
 - (b) give the authority reasonable opportunity to comment on the proposed direction; and
 - (c) consider any comment made by the authority.
- (3) The Minister must—
 - (a) present a copy of a direction to the Legislative Assembly within 6 sitting days after the day it is given to the authority; and
 - (b) if the copy would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day it is given to the authority—give a copy of the direction to the members of the Legislative Assembly within the 14 days.
- (4) If subsection (3) is not complied with, the direction is taken to have been revoked at the end of the period within which the copy of the direction should have been presented or given to members.
- (5) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

13 Assembly may recommend directions to authority

- (1) The Legislative Assembly may, by resolution, recommend that the Minister give the authority a stated direction under section 12.
- (2) The Minister must consider the recommended direction and must either—
 - (a) direct the authority under section 12; or
 - (b) tell the Legislative Assembly that the Minister does not propose to direct the authority as recommended.
- (3) A direction mentioned in subsection (2) (a) may be in accordance with the Legislative Assembly's resolution or as changed by the Minister.

14 Statement of planning intent

- (1) The Minister may give the authority a written statement that sets out the main principles that are to govern planning and land development in the ACT (the *statement of planning intent*).
- (2) The Minister must—
 - (a) present a copy of the statement of planning intent to the Legislative Assembly within 6 sitting days after the day it is given to the authority; and
 - (b) if the copy would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day it is given to the authority—give a copy of the statement to members of the Legislative Assembly within the 14 days.

- (3) To remove any doubt, the statement of planning intent does not authorise a person to whom the *Land (Planning and Environment) Act 1991*, section 8 (Effect of plan) applies to do anything inconsistent with the plan.

Example

The statement of planning intent may include policy material inconsistent with the Territory plan, but the plan would have to be amended before the policy could be implemented.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

15 Provision of planning services to others—ministerial approval

The authority may provide planning services to somebody other than the Territory only with the Minister's written approval.

16 Reports by authority to Minister

- (1) The authority must give the Minister a report, or information about its operations, required by the Minister.
- (2) A report under this section must be prepared in the form (if any) that the Minister requires.
- (3) This section is in addition to any other provision about the giving of reports or information by the authority.

17 Authority's annual report

A report prepared by the authority under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given to the authority under this Act or another Territory law during the year; and

- (b) a statement by the authority about action taken during the year to give effect to any direction given (whether before or during the year).

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

18 Delegations by authority

- (1) The authority may delegate the authority's functions under this Act or another Territory law to a public servant who is an authority staff member.
- (2) The authority may also delegate the function of granting leases on behalf of the Executive to the land agency.

Note For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

Part 2.4 The chief planning executive

19 Appointment of chief planning executive

- (1) The Executive must, after consulting with the council, appoint a person to be the Chief Planning Executive (the *chief planning executive*).

Note 1 For the making of appointments generally, see *Legislation Act 2001*, div 19.3.

Note 2 A power to appoint a person to a position includes power to appoint a person to act in the position (see *Legislation Act 2001*, s 209).

- (2) However, the Executive must not appoint a person under subsection (1) unless satisfied that the person has the management and planning experience or expertise to exercise the functions of the chief planning executive.
- (3) An appointment must be for a term of not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 (1) (c)).

- (4) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

20 Chief planning executive's employment conditions

The chief planning executive's conditions of appointment are the conditions agreed between the Executive and the chief planning executive, subject to any determination under the *Remuneration Tribunal Act 1995*.

21 Functions of chief planning executive

The chief planning executive may exercise the functions given to the chief planning executive under this Act or another Territory law.

22 Suspension or ending of chief planning executive's appointment

- (1) The Executive may suspend the chief planning executive from duty—
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity, if the incapacity affects the exercise of the chief planning executive's functions; or
 - (c) if the chief planning executive is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for at least 1 year.
- (2) The Minister must present to the Legislative Assembly a statement of the reasons for the suspension on the first sitting day after the day the chief planning executive is suspended.
- (3) If, within 6 sitting days after the day the statement is presented, the Legislative Assembly resolves to require the Executive to end the chief planning executive's appointment, the Executive must end the chief planning executive's appointment.
- (4) The chief planning executive's suspension ends—
 - (a) if the Minister does not comply with subsection (2)—at the end of the day the Minister should have presented to the Legislative Assembly the statement mentioned in that subsection; or
 - (b) if the Assembly does not pass a resolution mentioned in subsection (3) within the 6 sitting days—at the end of the 6th sitting day.
- (5) The chief planning executive is entitled to be paid salary and allowances while suspended.

Note An appointment also ends if the appointee resigns (see *Legislation Act 2001*, s 210).

Part 2.5 **Authority staff and consultants**

23 **Authority staff**

The staff of the authority are to be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of an instrumentality has all the powers of a chief executive under the Act in relation to staff members who are public servants. Under that Act, s 3, def of *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

24 **Authority consultants**

- (1) The authority may engage consultants.
- (2) However, the authority must not enter into a contract of employment under this section.

Chapter 3 The council

Part 3.1 Establishment, constitution and functions

25 Establishment of council

The Planning and Land Council is established.

26 Constitution of council

- (1) The council consists of—
 - (a) a chairperson; and
 - (b) a deputy chairperson; and
 - (c) at least 3, and not more than 5, other members.
- (2) The following must not be appointed under subsection (1):
 - (a) the chief planning executive;
 - (b) a member of the authority staff;
 - (c) the chief executive officer.
- (3) The council deputy chairperson acts in the position of council chairperson—
 - (a) during all vacancies in the position; and
 - (b) during all periods when the council chairperson cannot for any reason exercise the functions of the position.

Note The *Legislation Act 2001*, div 19.3.2, deals with acting appointments

27 Functions of council

- (1) The council must give advice on matters arising under this Act if asked by the Minister or the authority.
- (2) The council may exercise any other function given to the council under this Act or another Territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196 and dict, pt 1, def of *entity*).

Part 3.2 Council membership

28 Council members

- (1) The Minister may appoint the council members.

Note 1 For the making of appointments generally, see *Legislation Act 2001*, div 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see *Legislation Act 2001*, div 19.3.3). The appointment of someone other than a public servant for more than 6 months under this section would require consultation and be disallowable (see *Legislation Act 2001*, s 227).

Note 3 A power to appoint a person to a position includes power to appoint a person to act in the position (see *Legislation Act 2001*, s 209).

- (2) The Minister must try to ensure that the following disciplines and areas of expertise are represented among the members appointed:
- (a) urban economics;
 - (b) community and social planning;
 - (c) urban and regional planning;
 - (d) environmental management;
 - (e) land development;
 - (f) public policy or public law;
 - (g) urban design;
 - (h) transport planning;
 - (i) public administration;
 - (j) engineering.

- (3) An appointment must be for a term of not longer than 4 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict, pt 1, def of *appoint*).

29 Ending of council members' appointments

The Minister may end the appointment of a council member—

- (a) for misbehaviour; or
- (b) for physical or mental incapacity, if the incapacity affects the exercise of the member's functions; or
- (c) if the member—
 - (i) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit; or
 - (ii) is absent, other than on leave approved by the Minister, from 3 consecutive meetings of the council; or
 - (iii) contravenes section 36 (Disclosure of interests by council members) without reasonable excuse; or
 - (iv) commits, in Australia or elsewhere, an offence punishable by imprisonment for at least 1 year; or
- (d) if the Minister is satisfied that the member's ability to function as a council member is affected by an interest disclosed under section 36.

Note The appointment of a member also ends if the member resigns (see *Legislation Act 2001*, s 210).

30 Calling council meetings

- (1) The council is to meet at the times and places the council chairperson decides.

- (2) The council chairperson must ensure that council members have reasonable notice of meetings.
- (3) The council chairperson must ensure that, as far as practicable, the council meets at least monthly.

31 Council meetings

- (1) The council chairperson presides at meetings of the council.
- (2) The council may decide its own procedure in relation to anything for which a procedure is not provided under this Act.
- (3) If all the council members agree, a meeting may be held by means of a method of communication, or a combination of methods of communication, that allows the members taking part to hear what each other member says without being in each other's presence.
- (4) A council member who takes part in a meeting conducted under subsection (3) is taken, for all purposes, to be present at the meeting.

32 Council resolutions

A resolution is a valid resolution of the council, even if it was not passed at a meeting of the council, if—

- (a) notice of the resolution is given under procedures decided by the council; and
- (b) all council members agree, in writing, to the proposed resolution.

33 Minimum number for council meetings

Business may be carried on at a council meeting only if at least 4 council members are present.

34 Voting at council meetings

- (1) Questions arising at a council meeting may be decided by a majority of the votes of the council members present and voting.
- (2) If the votes of council members on a question are equally divided, the decision of the council chairperson is the decision of the council on the question.

35 Minutes of council proceedings

- (1) The council must keep minutes of its proceedings.
- (2) At a council meeting the council chairperson must ensure that the council considers the minutes of its last meeting.
- (3) The council must publish the minutes of its proceedings within 7 days after the day the minutes are confirmed by the council.

Example

The council may put the minutes of its proceedings on a website

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

36 Disclosure of interests by council members

- (1) A council member who has a relevant interest in an issue being considered, or about to be considered, by the council must, as soon as practicable after the relevant facts have come to the council member's knowledge, disclose the nature of the interest at a meeting of the council.
- (2) The disclosure must be recorded in the council's minutes and, unless the council otherwise decides, the council member must not—
 - (a) be present when the council considers the issue; or
 - (b) take part in a decision of the council on the issue.

- (3) Any other council member who also has a relevant interest in the issue must not—
- (a) be present when the council is considering its decision under subsection (2); or
 - (b) take part in the decision.
- (4) In this section:
- relevant interest*, in an issue, means—
- (a) a direct or indirect financial interest in the issue; or
 - (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the council member's functions in relation to the council's consideration of the issue.

37 Reporting of disclosed interests to Minister

- (1) Within 14 days after the disclosure of an interest under section 36 (1), the council chairperson must report to the Minister in writing about—
- (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the council under section 36 (2).
- (2) The council chairperson must give to the Minister, by 31 July in each year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 14 days after the day the Minister receives the statement.

(4) In this section:

relevant committee means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

Chapter 4 The land agency

Part 4.1 Establishment and functions of land agency

38 Establishment of land agency

- (1) The Land Development Agency (the *land agency*) is established.
- (2) The land agency—
 - (a) is a corporation; and
 - (b) must have a seal.

39 Functions of land agency

- (1) The land agency has the following functions:
 - (a) to develop land;
 - (b) to carry out works for the development and enhancement of land;
 - (c) to carry out strategic or complex urban development projects.
- (2) The land agency may exercise any other function given to the land agency under this Act or another Territory law.
- (3) The land agency may exercise its functions—
 - (a) alone; or
 - (b) through subsidiaries, joint ventures or trusts; or
 - (c) by holding shares in, or other securities of, corporations.

- (4) The land agency must exercise its functions—
- (a) in accordance with the objectives of the Territory plan; and
 - (b) in accordance with the latest business plan accepted by the Minister.

Note 1 For business plans, see div 4.2.2 (Land agency business plans).

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196 and dict, pt 1, def of *entity*).

40 Land agency functions to be exercised in accordance with directions

The land agency must comply with directions given to the land agency under this Act or another Territory law.

Note The land agency may be given directions under s 52.

41 Limitations on land agency's formation of corporations

- (1) The land agency must not do any of the following without the Executive's prior written approval:
- (a) subscribing for, or purchasing shares in, or debentures or other securities of, a corporation;
 - (b) forming, or taking part in the formation of, a corporation.
- (2) An approval under subsection (1)—
- (a) must relate only to a particular corporation or proposed corporation; and
 - (b) may be given subject to the conditions or restrictions stated in the approval.
- (3) If the land agency does something mentioned in subsection (1), the land agency must tell the Minister about doing the thing within 14 days after the day the agency does it.

- (4) The Minister must—
- (a) prepare a written statement setting out details of, and reasons for, the land agency's action; and
 - (b) present the statement to the Legislative Assembly within 6 sitting days after the day the Minister is told about the act; and
 - (c) if the statement would not be presented to the Legislative Assembly under paragraph (b) within 14 days after the day the Minister is told about the act—give the statement to members of the Legislative Assembly within the 14 days.
- (5) A statement need not include any material that is commercially sensitive.
- (6) However, if commercially sensitive information is not included in the statement, the Minister must, when presenting the statement, also present to the Legislative Assembly a further statement setting out the general nature of the information and the reason for its non-inclusion in the statement.

42 Limitations on land agency's participation in joint ventures and trusts

- (1) The land agency must not take part in a joint venture or trust without the Executive's prior written approval.
- (2) An approval under subsection (1)—
- (a) may apply generally or may relate to a particular proposed joint venture or trust; and
 - (b) may be given subject to the conditions or restrictions stated in the approval.
- (3) If the land agency enters into an agreement for a joint venture or trust, the land agency must tell the Minister about the agreement within 14 days after entering into the agreement.

- (4) The Minister must—
- (a) prepare a written statement setting out details of, and reasons for, the agreement; and
 - (b) present the statement to the Legislative Assembly within 6 sitting days after the day the Minister is told about the agreement; and
 - (c) if the statement would not be presented to the Legislative Assembly under paragraph (b) within 14 days after the day the Minister is told about the agreement—give the statement to members of the Legislative Assembly within the 14 days.
- (5) A statement need not include any material that is commercially sensitive.
- (6) However, if commercially sensitive information is not included in the statement, the Minister must, when presenting the statement, also present to the Legislative Assembly a further statement setting out the general nature of the information and the reason for its non-inclusion in the statement.

43 Corporations, joint ventures and trusts in which land agency has an interest

- (1) If the land agency has a controlling interest in a corporation, joint venture or trust, the agency must ensure that—
- (a) the auditor-general is appointed auditor for the corporation, joint venture or trust; and
 - (b) the corporation or joint venture, or a trustee for the trust, does not do anything that the agency itself may not do.

- (2) If the land agency has an interest, other than a controlling interest, in a corporation, joint venture or trust, the land agency must try to ensure that the auditor-general is appointed auditor for the corporation, joint venture or trust.

Note The *Auditor-General Act 1996*, s 14 (Power to obtain information) enables the auditor-general to direct a person, in connection with the auditor-general's functions, to give to the auditor-general information and documents.

- (3) In this section—

controlling interest—see the *Auditor-General Act 1996*, section 5.

Part 4.2 Management of land agency

Division 4.2.1 Introductory concepts

44 Meaning of *business plan* for pt 4.2

For this part, a *business plan* is a document that complies with section 45.

Division 4.2.2 Land agency business plans

45 Contents of land agency business plans

- (1) The land agency must prepare a business plan for each financial year.
- (2) A land agency business plan for a financial year must contain—
 - (a) a copy of the statement of intent; and
 - (b) a description of the major undertakings that the land agency is likely to be involved in during the financial year and the next 2 financial years; and
 - (c) a description of the land agency's business strategies, and proposed business strategies, for the financial year and the next 2 financial years; and
 - (d) any other information or material that—
 - (i) the Minister has asked the land agency, in writing, to include in the business plan; or
 - (ii) is prescribed under the regulations.

- (3) For this section:

statement of intent, for a financial year, means the statement of intent for the year provided under the *Financial Management Act 1996*, section 58 (Statements of intent).

46 Preparation, acceptance and presentation of business plans

- (1) The regulations may prescribe how, and when, a business plan—
- (a) is developed or varied; and
 - (b) is accepted by the Minister.
- (2) If the Minister accepts a business plan, the Minister must—
- (a) present a copy of the business plan to the Legislative Assembly within 6 sitting days after the day of acceptance; and
 - (b) if the copy would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day of acceptance—give a copy of the business plan to members of the Legislative Assembly within the 14 days.

Division 4.2.3 Land agency financial provisions

47 Proceeds of lease sale

Consideration received by the land agency for the sale of a lease of land is income of the land agency.

48 Payment of funds to Territory

- (1) The Treasurer may, in writing, direct the land agency to pay to the Territory—
- (a) the amount stated in the direction; or
 - (b) an amount calculated in the way stated in the direction.

- (2) The Treasurer may also direct the land agency, in a direction under subsection (1) or another instrument, about—
 - (a) how payment is to be made; and
 - (b) when payment is to be made; and
 - (c) the conditions relating to payment.
- (3) In giving a direction under subsection (1), the Treasurer must have regard to—
 - (a) the land agency's assets and liabilities; and
 - (b) the land agency's income and expenditure; and
 - (c) the land agency's ability to exercise its functions; and
 - (d) the requirement that the Territory obtain a reasonable return from the development and disposal of land.
- (4) The Treasurer must—
 - (a) present a copy of a direction under subsection (1) to the Legislative Assembly within 6 sitting days after the day it is given to the land agency; and
 - (b) if the copy would not be presented to the Legislative Assembly under paragraph (a) within 14 days after the day it is given to the land agency—give a copy of the direction to the members of the Legislative Assembly within the 14 days.
- (5) If subsection (4) is not complied with, the direction is taken to have been revoked at the end of the period within which the copy of the direction should have been presented or given to members.

49 Liability for Territory taxes

This Act does not exempt the land agency from liability for a tax under any other Territory law.

50 Guarantees by land agency

- (1) The land agency must not give a guarantee for the payment of money or the performance of an obligation without the Treasurer's prior written approval.
- (2) The Treasurer's approval may be subject to conditions stated in the approval.

Division 4.2.4 General

51 Land agency to give information to Ministers

- (1) The land agency must give the Minister or the Treasurer the information about its operations required by the Minister or the Treasurer.
- (2) The land agency must tell the Minister about any development that, in the land agency's view, may significantly affect—
 - (a) an objective set out in a statement of intent that is part of the latest business plan accepted by the Minister; or

Note For the acceptance of a business plan by the Minister, see s 46 (Preparation, acceptance and presentation of business plans).

 - (b) the financial viability or operating ability of the land agency or a corporation, joint venture or trust in which the land agency has an interest.
- (3) The land agency must tell the Minister under subsection (2) about a development within 14 days after the day the agency becomes aware of the existence of the development.
- (4) For this section:
statement of intent—see section 45 (Contents of land agency business plans).

52 Ministerial directions to land agency

- (1) The Minister may give written directions to the land agency—
 - (a) about the general policies the land agency should follow; or
 - (b) the principles that are to govern the exercise of its functions.
- (2) Before giving a direction, the Minister must—
 - (a) tell the land agency about the proposed direction; and
 - (b) give the land agency reasonable opportunity to comment on the proposed direction; and
 - (c) consider any comments made by the land agency.
- (3) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) A direction must be notified under the *Legislation Act 2001* within 14 days after the day it is made.
- (5) If subsection (4) is not complied with, the direction is taken to have been revoked at the end of the 14 days.

53 Territory to compensate land agency for cost of complying with directions

- (1) The Territory must pay to the land agency the reasonable net cost of complying with a direction under section 52.
- (2) The amount payable under subsection (1) is the amount agreed between the land agency and the Treasurer or, failing agreement, the amount decided by the Chief Minister.

54 Committees

- (1) The land agency board—
 - (a) must establish an audit committee; and

- (b) may establish any other committee; and
 - (c) may appoint land agency board members and other people to committees.
- (2) However, the chief executive officer must not be appointed a member of the audit committee.
- (3) Also, the chairperson of the audit committee must be a land agency board member.
- (4) The procedures of a committee are decided by the land agency board or, if there is no relevant decision of the board, by the committee.

55 Land agency's annual report

A report prepared by the land agency under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given under section 52 (Ministerial directions to land agency) during the year; and
- (b) a statement by the land agency about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

56 Delegation by land agency

The land agency may delegate its functions, including functions delegated to it by the authority, to the chief executive officer or a land agency staff member.

Note For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

Part 4.3 **Membership of land agency and its board**

57 **Constitution of land agency**

The land agency consists of the land agency board.

58 **Land agency board**

- (1) The land agency board consists of—
 - (a) a chairperson; and
 - (b) a deputy chairperson; and
 - (c) at least 3, and not more than 5, other members.
- (2) The following must not be appointed under subsection (1):
 - (a) the chief planning executive;
 - (b) a member of the authority staff;
 - (c) the chief executive officer.
- (3) The land agency deputy chairperson acts in the position of land agency chairperson—
 - (a) during all vacancies in the position; and
 - (b) during all periods when the land agency chairperson cannot for any reason exercise the functions of the position.

Note The *Legislation Act 2001*, div 19.3.2, deals with acting appointments.

59 Appointment of land agency board members

- (1) The Minister may appoint the land agency board members.

Note 1 For the making of appointments generally, see *Legislation Act 2001*, div 19.3.

Note 2 Certain statutory appointments made by a Minister require consultation with a Legislative Assembly committee and are disallowable (see *Legislation Act 2001*, div 19.3.3).

Note 3 A power to appoint a person to a position includes power to appoint a person to act in the position (see *Legislation Act 2001*, s 209).

Note 4 A power to appoint a person for an Act includes a power to appoint a person for a particular provision of the Act (see *Legislation Act 2001*, s 7).

- (2) The Minister must try to ensure that the following disciplines and areas of expertise are represented among the members appointed:

- (a) land development;
- (b) economics;
- (c) public law;
- (d) finance or accounting;
- (e) public administration;
- (f) engineering.

- (3) An appointment must be for a term of not longer than 4 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict, pt 1, def of *appoint*).

60 Honesty, care and diligence of land agency board members

In exercising the functions of land agency board member, a land agency board member must exercise the degree of honesty, care and

diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

61 Ending of land agency board members' appointments

The Minister may end the appointment of a land agency board member—

- (a) for misbehaviour; or
- (b) for physical or mental incapacity, if the incapacity affects the exercise of the member's functions; or
- (c) if the member—
 - (i) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit; or
 - (ii) is absent, other than on leave approved by the Minister, from 3 consecutive meetings of the land agency board; or
 - (iii) contravenes section 60 or section 68 (Disclosure of interests by land agency board members); or
 - (iv) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for at least 1 year; or
- (d) if the Minister is satisfied that the member's ability to exercise functions as a land agency board member is affected by an interest disclosed under section 68.

Note An appointment also ends if the appointee resigns (see *Legislation Act 2001*, s 210).

Part 4.4 Meetings of land agency board

62 Calling land agency board meetings

- (1) The land agency board is to meet at the times and places the land agency chairperson decides.
- (2) The land agency chairperson must ensure that land agency board members have reasonable notice of meetings.
- (3) The land agency chairperson must ensure that, as far as practicable, the land agency board meets at least monthly.

63 Procedure at land agency board meetings

- (1) The land agency chairperson presides at meetings of the land agency board at which the chairperson is present.
- (2) The land agency board may decide its own procedure in relation to anything for which a procedure is not provided under this Act.
- (3) If all the land agency board members agree, a meeting may be held by means of a method of communication, or a combination of methods of communication, that allows the members taking part to hear what each other member says without being in each other's presence.
- (4) A land agency board member who takes part in a meeting conducted under subsection (3) is taken, for all purposes, to be present at the meeting.

64 Land agency board resolutions

A resolution is a valid resolution of the land agency board, even if it was not passed at a meeting of the board, if—

- (a) notice of the resolution is given under procedures decided by the board; and

(b) all board members agree, in writing, to the proposed resolution.

65 Minimum number for land agency board meetings

Business may be carried on at a land agency board meeting only if at least 4 land agency board members are present.

66 Voting at land agency board meetings

- (1) Questions arising at a land agency board meeting may be decided by a majority of the votes of the land agency board members present and voting.
- (2) If the votes of land agency board members on a question are equally divided, the decision of the chairperson is the decision of the land agency board on the question.

67 Minutes of land agency board proceedings

- (1) The land agency must keep minutes of its proceedings.
- (2) At a land agency board meeting the land agency chairperson must ensure that the land agency board considers the minutes of its last meeting.

68 Disclosure of interests by land agency board members

- (1) A land agency board member who has a relevant interest in an issue being considered, or about to be considered, by the land agency must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the land agency.
- (2) The disclosure must be recorded in the land agency board's minutes and, unless the land agency board otherwise decides, the land agency board member must not—
 - (a) be present when the land agency considers the issue; or

- (b) take part in a decision of the land agency on the issue.
- (3) Any other land agency board member who also has a relevant interest in the issue must not—
 - (a) be present when the land agency board is considering its decision under subsection (2); or
 - (b) take part in the decision.
- (4) For this section:
relevant interest, in an issue, means—
 - (a) a direct or indirect financial interest in the issue; or
 - (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the land agency's consideration of the issue.

69 Reporting of disclosed interests to Minister

- (1) Within 14 days after the disclosure of an interest under section 68 (1), the land agency chairperson must report to the Minister in writing about—
 - (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the land agency board under section 68 (2).
- (2) The land agency chairperson must give to the Minister, by 31 July in each year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly within 14 days after the day the Minister receives the statement.

(4) In this section:

relevant committee means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

Part 4.5 **Land agency chief executive officer, staff and consultants**

Division 4.5.1 **Land agency chief executive officer**

70 **Appointment of chief executive officer**

- (1) The land agency must appoint a person to be the chief executive officer.

Note For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

- (2) The chief executive officer's conditions of appointment are the conditions agreed between the land agency and the chief executive officer, subject to any determination under the *Remuneration Tribunal Act 1995*.
- (3) The land agency may enter into an agreement mentioned in subsection (2) only after consulting the Minister.
- (4) The land agency may end the chief executive's appointment only after consulting the Minister.

71 **Functions of chief executive officer**

- (1) The chief executive officer must manage the land agency's affairs on behalf of the land agency.
- (2) The chief executive officer also has any other function given to chief executive officer by the land agency board.
- (3) The chief executive officer must exercise the chief executive officer's functions in accordance with any direction given by the land agency board.

Division 4.5.2 Land agency staff and consultants

72 Land agency staff

The staff of the land agency are employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of an instrumentality has all the powers of a chief executive under the Act in relation to staff members who are public servants. Under that Act, s 3, def of *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

73 Land agency consultants

- (1) The land agency may engage consultants.
- (2) However, the land agency must not enter into a contract of employment under this section.

Chapter 5 Miscellaneous

74 **Meaning of *sustainable development***

For this Act:

sustainable development means the effective integration of social, economic and environmental considerations in decision-making processes, achievable through implementation of the following principles:

- (a) the precautionary principle;
- (b) the inter-generational equity principle;
- (c) conservation of biological diversity and ecological integrity;
- (d) appropriate valuation and pricing of environmental resources.

the inter-generational equity principle means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

the precautionary principle means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

75 **Abuse of position**

- (1) An official commits an offence if—
 - (a) the official—
 - (i) exercises an influence that the official has because of the official's position; or

- (ii) engages in conduct in the exercise of a function that the official has because of the official's position; or
- (iii) uses information gained because of the official's position; and
- (b) the official does so with the intention of—
 - (i) dishonestly obtaining a benefit for the official or someone else; or
 - (ii) dishonestly causing a detriment to someone else.

Maximum penalty: imprisonment for 5 years.

- (2) A person commits an offence if—
 - (a) the person has stopped being an official; and
 - (b) the person uses information that the person obtained because of the person's position as an official; and
 - (c) the person does so with the intention of—
 - (i) dishonestly obtaining a benefit for the person or someone else; or
 - (ii) dishonestly causing a detriment to someone else.

Maximum penalty: imprisonment for 5 years.

- (3) In this section:
 - dishonestly***—a person acts dishonestly if—
 - (a) the person's conduct is dishonest according to the standards of ordinary people; and
 - (b) the person knows that the conduct is dishonest according to those standards.

official means—

- (a) the chief planning executive; or
- (b) a council member; or
- (c) the land agency chief executive officer; or
- (d) a land agency board member.

position, in relation to an official, means the position held by the official under this Act.

76 Review of Act

- (1) The Minister must begin a review of the operation and effectiveness of this Act not later than 31 December 2006.
- (2) The Minister must ensure that, during the review, regard is had to—
 - (a) the effectiveness of the operations of the entities established by this Act; and
 - (b) the need for the continuation of the existence of each entity; and
 - (c) the need for the continuation of this Act.
- (3) The Minister must also consider anything else that seems to the Minister to be relevant to the operation and effectiveness of this Act.
- (4) The Minister must prepare a report based on the review and must, as soon as practicable, present a copy to the Legislative Assembly.
- (5) This section expires on 31 December 2008.

77 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Dictionary

(see s 3)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- commissioner for revenue
- corporation
- function
- person
- Territory plan.

authority means the Planning and Land Authority established under section 7 (1).

business plan, for part 4.2 (Management of land agency)—see section 44 (Meaning of *business plan* for pt 4.2).

chief executive officer, for the land agency, means the person appointed under section 70.

chief planning executive—see section 19 (Appointment of chief planning executive).

council means the Planning and Land Council established under section 25 (Establishment of council).

council chairperson means the council member mentioned in section 26 (1) (a).

council deputy chairperson means the council member mentioned in section 26 (1) (b).

council member means a person mentioned in section 26 (1) (Constitution of council).

development—see the *Land (Planning and Environment) Act 1991*, section 222 (Interpretation for pt 6).

joint venture includes partnership and arrangement for sharing profit.

land agency—see section 38 (1).

land agency board means the board mentioned in section 58.

land agency board member means a person mentioned in section 58 (1).

land agency chairperson means the person mentioned in section 58 (1) (a).

land agency deputy chairperson means the person mentioned in section 58 (1) (b).

statement of planning intent—see section 14 (Statement of planning intent).

sustainable development—see section 74 (Meaning of *sustainable development*).

tax includes duty, fee or charge.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Planning and Land Act 2002 A2002-55

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

remainder commenced 1 July 2003 (s 2)

as amended by

Planning and Land Legislation Amendment Act 2003 A2003-30 pt 2 and sch 1 pt 1.2

notified LR 30 June 2003

s 1, s 2 commenced 30 June 2003 (LA s 75 (1))

pt 2 and sch 1 pt 1.2 commenced 1 July 2003 (s 2 and see A2002-55, s 2)

Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.26

notified LR 19 March 2004

s 1, s 2 commenced 19 March 2004 (LA s 75 (1))

sch 1 pt 1.26 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Authority's annual report

s 17 sub A2004-9 amdt 1.34

Payment of funds to Territory

s 48 am A2003-30 amdt 1.10, amdt 1.11

Land agency's annual report

s 55 sub A2004-9 amdt 1.35

Delegation by land agency

s 56 am A2003-30 s 4

Abuse of position

s 75 def *official* am A2003-30 amdt 1.12

Review of Act

s 76 exp 31 December 2008 (s 76 (5))

Endnotes

4 Amendment history

Transitional provisions

ch 6 hdg ins A2003-30 s 4
exp 1 July 2004 (s 86)

Interpretation

pt 6.1 hdg ins A2003-30 s 4
exp 1 July 2004 (s 86)

Definitions for ch 6

s 78 ins A2003-30 s 4
exp 1 July 2004 (s 86)

Assets, rights and liabilities

pt 6.2 hdg ins A2003-30 s 4
exp 1 July 2004 (s 86)

Vesting of assets, rights and liabilities

s 79 ins A2003-30 s 4
exp 1 July 2004 (s 86)

Registration of changes in ownership of certain assets

s 80 ins A2003-30 s 4
exp 1 July 2004 (s 86)

Evidentiary certificate for vested assets and liabilities

s 81 ins A2003-30 s 4
exp 1 July 2004 (s 86)

Proceedings and evidence

s 82 ins A2003-30 s 4
exp 1 July 2004 (s 86)

Reports and financial statements of repealed authorities

pt 6.3 hdg ins A2003-30 s 4
exp 1 July 2004 (s 86)

Continuation of repealed authorities for annual reports

s 83 ins A2003-30 s 4
exp 1 July 2004 (s 86)

Continuation of repealed authorities CEOs for certain purposes

s 84 ins A2003-30 s 4
exp 1 July 2004 (s 86)

Other provisions

pt 6.4 hdg ins A2003-30 s 4
exp 1 July 2004 (s 86)

Transitional regulations

s 85 ins A2003-30 s 4
exp 1 July 2004 (s 86)

Expiry of ch 6
s 86 ins A2003-30 s 4
 exp 1 July 2004 (s 86)

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 (RI) 3 July 2003	3 July 2003– 12 Apr 2004	A2003-30	new Act and amendments by A2003-30 reissue for textual correction in s 56
R2 13 Apr 2004	13 Apr 2004- 1 July 2004	A2004-9	amendments by A2004-9

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