



Australian Capital Territory

Land (Planning and Environment) (Compliance) Amendment Act 2003

A2003-34

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Australian Capital Territory

Land (Planning and Environment) (Compliance) Amendment Act 2003

A2003-34

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

*Notified under the Legislation Act 2001 on 7 July 2003
(see www.legislation.act.gov.au)*

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

Part 1 Preliminary

1 Name of Act

This Act is the *Land (Planning and Environment) (Compliance) Amendment Act 2003*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Part 2 Land (Planning and Environment) Act 1991

3 Act amended—pt 2

This part and schedule 2 amend the *Land (Planning and Environment) Act 1991*.

Note Additional amendments are included in sch 1.

4 Licences Section 210 (1), new example and note

insert

Example of when a licence might be given to a person

To allow a building (including a fitting attached to the building) owned or occupied by the person to encroach onto, over or under an area of unleased public land.

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).

5 New section 210 (4)

insert

- (4) A person is not required to hold a licence under this section to occupy or use an area of unleased public land if—
- (a) the person holds a permit under the *Roads and Public Places Act 1937* to place an object in, over or across the area; and
 - (b) the area is being occupied or used in accordance with the permit; and
 - (c) for an occupation or use that requires an approval under division 6.2 (Approvals)—

- (i) the occupation or use has been approved under that division; and
- (ii) the person is complying with any conditions under section 245 (Conditional approvals) that apply to the approval.

6 Licences in respect of land that is not public land Section 217 (1), new example and note

insert

Example of when a licence might be given to a person

To allow a building (including a fitting attached to the building) owned or occupied by the person to encroach onto, over or under an area of unleased Territory land that is not public land.

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).

7 New section 217 (5)

insert

- (5) A person is not required to hold a licence under this section to occupy or use an area of unleased Territory land that is not public land if—
 - (a) the person holds a permit under the *Roads and Public Places Act 1937* to place an object in, over or across the area; and
 - (b) the area is being occupied or used in accordance with the permit; and
 - (c) for an occupation or use that requires an approval under division 6.2 (Approvals)—
 - (i) the occupation or use has been approved under that division; and

- (ii) the person is complying with any conditions under section 245 (Conditional approvals) that apply to the approval.

8 Division 6.3

substitute

Division 6.3 Orders

Subdivision 6.3.1 Making of orders

254 Applications to planning and land authority for orders

- (1) A person may apply to the planning and land authority for an order directed to 1 or more of the following:
- (a) the lessee or occupier of a place where a controlled activity was, is being, or is to be, conducted;
 - (b) anyone by whom or on whose behalf a controlled activity was, is being, or is to be, conducted.
- (2) The application must state—
- (a) the matter about which the order is sought; and
 - (b) the kind of order sought by the person; and
 - (c) each person to whom the order sought is to be directed; and
 - (d) the place in relation to which the order is sought; and
 - (e) the grounds on which the order is sought.

Note If a form is approved under s 287A (Approved forms) for an application, the form must be used.

- (3) The planning and land authority must give written notice of the application to—

- (a) each person to whom the order sought is to be directed; and
- (b) if different from the person or people mentioned in paragraph (a)—the lessee or occupier of the place in relation to which the order is sought; and
- (c) if the order sought relates to the control of a pest animal or plant—the conservator; and
- (d) if the order sought relates to the pruning of a significant tree under the *Tree Protection (Interim Scheme) Act 2001*—the conservator; and

Note For restrictions on pruning etc a significant tree, see *Tree Protection (Interim Scheme) Act 2001*, s 10.

- (e) if the order sought relates to the parking of a heavy vehicle on residential land under the *Road Transport (Safety and Traffic Management) Regulations 2000*, division 3.1.3—the road transport authority.

Note For how documents may be given, see Legislation Act, pt 19.5.

- (4) The notice must—
 - (a) be accompanied by a copy of the application; and
 - (b) contain a statement to the effect that the person to whom it is given may, within 7 days after the day the person is given the notice, make a submission to the planning and land authority about the making of the order.
- (5) The notice may also include any other information that the planning and land authority considers appropriate.

254A Decision on application to planning and land authority for order

- (1) Before deciding whether to make an order on an application under section 254, the planning and land authority must consider any

submission made by a person within 7 days after the day the person was given notice of the application under that section.

- (2) The planning and land authority may decide—
- (a) to make an order of the kind sought; or
 - (b) to make an order (including a different kind of order) that is not more onerous than the order sought; or
 - (c) not to make an order.

Example of less onerous order—par (b)

A person applies for an order for the demolition of an unapproved structure but the planning and land authority makes an order that a development application be lodged for the structure within a stated period and, if the application is not lodged within that period or is not approved, the structure is to be demolished.

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).

- (3) An order may be directed to 1 or more of the following:
- (a) the person against whom the order is sought to be directed;
 - (b) if the planning and land authority considers that the order would be more appropriately directed to someone else mentioned in section 254 (3) (a) or (b)—that person.
- (4) The planning and land authority is to be taken to have refused to make the order applied for under section 254 (Applications to planning and land authority for orders) if the authority fails to decide the application before the end of the period prescribed under the regulations.
- (5) The planning and land authority must refuse to make an order about the use or management of land in a way that fails to control a pest animal or plant if—

- (a) there is a written agreement between the lessee or occupier of the land and the Environment Minister about control of the propagation of the pest animal or plant; and
- (b) the authority is satisfied that the lessee or occupier is giving effect to the agreement.

255 Proposed orders on planning and land authority's own initiative

- (1) This section applies if the planning and land authority proposes, on the authority's own initiative, to make an order (the *proposed order*) directed to 1 or more of the following:
 - (a) the lessee or occupier of a place where a controlled activity was, is being, or is to be, conducted;
 - (b) anyone by whom or on whose behalf a controlled activity was, is being, or is to be, conducted.
- (2) The planning and land authority must give written notice of the proposed order to—
 - (a) each person to whom the proposed order is directed; and
 - (b) if different from the person or people mentioned in paragraph (a)—the lessee or occupier of the place in relation to which the proposed order is to apply; and
 - (c) if the proposed order relates to the control of a pest animal or plant—the conservator; and
 - (d) if the proposed order relates to the pruning of a significant tree under the *Tree Protection (Interim Scheme) Act 2001*—the conservator; and

Note For restrictions on pruning etc a significant tree, see *Tree Protection (Interim Scheme) Act 2001*, s 10.

- (e) if the proposed order relates to the parking of a heavy vehicle on residential land under the *Road Transport (Safety and Traffic Management) Regulations 2000*, division 3.1.3—the road transport authority.

Note For how documents may be given, see Legislation Act, pt 19.5.

- (3) The notice must state—
 - (a) each person to whom the proposed order is directed; and
 - (b) the terms of the proposed order and the place in relation to which it is to apply; and
 - (c) the grounds for making the proposed order; and
 - (d) when the proposed order will take effect; and
 - (e) if appropriate—
 - (i) the period for compliance with the proposed order; and
 - (ii) when the proposed order will end (including, for example, on the happening of an event stated in the order).

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).

- (4) Also, the notice must contain a statement to the effect that the person to whom it is given may, within 7 days after the day the person receives the notice, make a submission to the planning and land authority about the making of the proposed order.
- (5) Further, the notice may include any other information that the planning and land authority considers appropriate

256 Decision on proposed order on planning and land authority's own initiative

- (1) Before deciding whether to make the proposed order mentioned in section 255, the planning and land authority must consider any submission made by a person within 7 days after the day the person was given notice of the proposed order under section 255 (2).
- (2) The planning and land authority may decide—
 - (a) to make the proposed order; or
 - (b) to make an order (including a different kind of order) that is not more onerous than the proposed order; or
 - (c) not to make the proposed order.

Example of less onerous order—par (b)

An order that requires the doing of an act within a period longer than that stated in the proposed order.

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).

- (3) An order may be directed to 1 or more of the following:
 - (a) the person against whom the proposed order is directed; or
 - (b) if the planning and land authority considers that the order would be more appropriately directed to someone else mentioned in section 255 (2) (a) or (b)—that person.

257 Content of orders

- (1) An order must state—
 - (a) that it is an order under this Act made by the planning and land authority; and
 - (b) each person to whom the order is directed; and

- (c) anyone else who is bound by the order (see section 257B); and
- (d) the terms of the order and the place in relation to which the order applies; and
- (e) the grounds on which the order is made; and
- (f) when the order takes effect; and
- (g) if appropriate—
 - (i) the period for compliance with the order; and
 - (ii) when the order ends (including, for example, on the happening of an event stated in the order).

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).

- (2) An order must also contain a statement to the effect that the order operates until it is revoked or ends in accordance with the order.
- (3) An order may direct anyone to whom it is directed—
 - (a) not to begin a development without approval; or
 - (b) to stop carrying out a development without approval; or
 - (c) to stop, or not begin, a controlled activity other than a development; or
 - (d) to comply with the terms of an approval to undertake a development; or
 - (e) to stop carrying out a development other than in accordance with the conditions under which an approval to carry out the development was given; or
 - (f) 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 under a Territory law; or

- (g) 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 a Territory law; or
- (h) to restore any land, building or structure that has been altered without approval or permission required under a Territory law; or
- (i) to replace with an identical building or structure any building or structure that has been demolished without approval or permission required under a Territory law; or
- (j) to clean up a leasehold; or
- (k) to prune, in a way stated in the order, a tree, sapling, plant or shrub that overhangs a public place; or

Note For restrictions on pruning etc a significant tree, see *Tree Protection (Interim Scheme) Act 2001*, s 10.

- (l) to stop carrying out an activity that is likely to cause soil erosion; or
- (m) to stop carrying out an activity that involves destroying, damaging, removing or otherwise interfering with vegetation (living or dead) or removing or otherwise interfering with soil that is—
 - (i) between the banks of a watercourse; or
 - (ii) within 20m of a bank of a watercourse; or
 - (iii) on land having a slope of more than 18° from the horizontal; or
- (n) to manage land held under a rural lease in accordance with the land management agreement applying to it; or

- (o) if the person to whom the order is directed is bound by a land management agreement—to comply with the land management agreement.

257A Notice of making of orders

If the planning and land authority makes an order, the authority must give notice of the making of the order to the following:

- (a) each person to whom the order is directed;
- (b) the applicant (if any) for the order;
- (c) the lessee or occupier of the place in relation to which the order applies;
- (d) the registrar-general;
- (e) if the order relates to the control of a pest animal or plant—the conservator;
- (f) if the order relates to the pruning of a significant tree under the *Tree Protection (Interim Scheme) Act 2001*—the conservator; and
- (g) if the order relates to the parking of a heavy vehicle on residential land under the *Road Transport (Safety and Traffic Management) Regulations 2000*, division 3.1.3—the road transport authority;
- (h) anyone else whose interests the authority believes are adversely affected by the order.

Note For how documents may be given, see Legislation Act, pt 19.5.

257B Who is bound by an order?

- (1) An order binds each person to whom it is directed.
- (2) If an order binds the lessee of the place to which the order applies, the order also binds anyone who becomes the lessee of the place

after the order is made (a *future lessee*) to the same extent as if the order had been directed to that person.

- (3) If an order binds the occupier of the place to which the order applies, the order also binds anyone who becomes an occupier of the place after the order is made (a *future occupier*) to the same extent as if the order had been directed to that person.
- (4) However, subsection (2) or (3) does not apply to an order if the order states that it does not bind a future lessee or a future occupier (as appropriate) of the lease.

258 Contravening orders

- (1) A person commits an offence if—
 - (a) the planning and land authority makes an order directed to the person; and
 - (b) the order requires the person to do, or not do, something stated in the order; and
 - (c) the person is given notice of the making of the order (whether by being given a copy of the order or otherwise); and
 - (d) the person contravenes the order.

Maximum penalty: the amount stated in schedule 5, column 3 in relation to the activity for which the order was made.

Note A Territory authority is not liable to be prosecuted for an offence against this section (see Legislation Act, s 121).

- (2) An offence against this section is a strict liability offence.

258A Ending of orders

- (1) An order operates until it is revoked or ends in accordance with the order.

- (2) A person who is bound by an order may, in writing, apply to the planning and land authority for the revocation of the order.
- (3) The application must state the grounds on which the revocation of the order is sought.
- (4) The planning and land authority may revoke the order if satisfied, on reasonable grounds, that the order is no longer necessary or appropriate.

258B Notice of ending of orders

- (1) If an order ends otherwise than by being revoked, the planning and land authority must give written notice of the ending of the order to the registrar-general.
- (2) If the planning and land authority revokes an order, the authority must give written notice of the revocation to—
 - (a) each person to whom the order was directed; and
 - (b) if different from the person or people mentioned in paragraph (a)—the lessee or occupier of the place in relation to which the order applied; and
 - (c) the registrar-general.

258C Effect of orders about pest animals or plants

- (1) This section applies if an order relates to the control of a pest animal or plant.
- (2) A person to whom the order is directed is not required to hold a licence under the *Nature Conservation Act 1980* for any action required to comply with the order in relation to the pest animal or plant.

Subdivision 6.3.2 Rectification work**259 Definitions for sdiv 6.3.2**

In this subdivision:

authorised person—see section 259C (1).

rectification work means—

- (a) work in relation to a place where a controlled activity is being conducted to ensure compliance with the approval for the activity; or
- (b) the conduct of an activity required under an order that was not carried out within the period stated in the order.

259A Direction to carry out rectification work

- (1) The planning and land authority may direct 1 or more of the following to carry out rectification work in relation to a controlled activity:
 - (a) the lessee or occupier of a place where the activity was or is being conducted;
 - (b) anyone by whom or on whose behalf the activity was or is being conducted.
- (2) The planning and land authority must give notice of the direction to—
 - (a) the person who is required to comply with the direction; and
 - (b) if different from the person mentioned in paragraph (a)—the lessee or occupier of the place to which the direction applies.

Note For how documents may be given, see Legislation Act, pt 19.5.
- (3) The notice must state—

- (a) that it is a direction under this Act made by the planning and land authority; and
 - (b) the person who is required to comply with the direction; and
 - (c) the place in relation to which the direction applies; and
 - (d) the rectification work required; and
 - (e) the grounds on which the direction is made; and
 - (f) that the rectification work must be completed within 7 days after the day the notice is given to the person or any longer period stated in the notice.
- (4) The notice must also contain a statement to the effect that, if the rectification work is not completed within the period required by the notice—
- (a) the planning and land authority may authorise someone else to carry out the work; and
 - (b) the reasonable cost of carrying out the work is a debt to the Territory by the person who is required to comply with the direction.
- (5) This section applies whether or not a proceeding for an offence against this part has been begun or is about to begin.

259B Contravening direction to carry out rectification work

- (1) A person commits an offence if—
- (a) the planning and land authority makes a direction to carry out rectification work in relation to a controlled activity; and
 - (b) the person is required to comply with the direction; and
 - (c) the person is given notice of the making of the direction; and

(d) the person contravenes the direction.

Maximum penalty: 50 penalty units.

Note A Territory authority is not liable to be prosecuted for an offence against this section (see Legislation Act, s 121).

(2) An offence against this section is a strict liability offence.

259C Authorisation to carry out rectification work

(1) The planning and land authority may authorise a person (an *authorised person*) to enter the place to which a direction under section 259A applies to carry out the rectification work required by the notice under that section if the work is not completed within the period required by the notice.

(2) However, the planning and land authority must not give the authorisation—

(a) until the end of the period within which an application may be made to the administrative appeals tribunal for the review of the decision to make the order to which the rectification work relates; or

(b) if an application is made to the administrative appeals tribunal for a review of the decision—unless the decision is upheld or the application is withdrawn.

(3) The authorised person must carry out the rectification work in accordance with the directions of an inspector.

259D Obstructing etc authorised people

(1) A person commits an offence if—

(a) the person knows that, or is reckless about the fact that, a person is an authorised person; and

- (b) the person obstructs, hinders, intimidates or resists the authorised person in the exercise of the person's functions.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Strict liability applies to subsection (1) (b).

259E Liability for cost of rectification work

The person who is required to comply with a direction under section 259A (Direction to carry out rectification work) must pay to the Territory the reasonable cost of any rectification work carried out by an authorised person to which the direction related.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

259F Determination of criteria for deferral of rectification work cost

- (1) The planning and land authority may, in writing, determine circumstances when the payment of all or part of the cost of rectification work carried out by an authorised person on a lessee's leasehold may be deferred by the lessee.
- (2) A determination under subsection (1) is a notifiable instrument.

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

259G Application for deferral of rectification work cost

- (1) A lessee who is required to pay the cost of rectification work carried out on the lessee's leasehold may, in writing, apply to the planning and land authority for the deferment of payment of all or part of the cost of the rectification work.
- (2) The application must state the grounds for the application.

Note If a form is approved under s 287A (Approved forms) for an application, the form must be used.

259H Deferral of rectification work cost

- (1) The planning and land authority may, in writing, declare that all or part of the cost of rectification work payable by a lessee is deferred if satisfied that a circumstance determined under section 259F (1) applies to the lessee.

Note Interest is payable on the deferred amount, see s 259I.

- (2) The declaration must state—
 - (a) the leasehold to which the declaration relates; and
 - (b) the amount of the cost of the rectification work deferred.

259I Security for deferred rectification work cost

- (1) The planning and land authority must—
 - (a) lodge a copy of a declaration under section 259H with the registrar-general for registration under the *Land Titles Act 1925*; and
 - (b) give a copy of the declaration to the lessee of the leasehold to which the declaration relates and anyone else who has an interest in the leasehold.
- (2) For the *Land Titles Act 1925*, section 104 (1) (Lodging of caveat), the Territory is taken to be a person claiming an interest in the leasehold to which the declaration relates.
- (3) The registration under the *Land Titles Act 1925* of the copy of a declaration under section 259H creates a charge over the leasehold to which the declaration relates for—
 - (a) the amount stated in the declaration; and
 - (b) interest on the amount calculated on a daily basis at the interest rate applying from time to time under the *Taxation Administration Act 1999*, section 26 (Interest rate).

259J Payment of deferred rectification work cost

- (1) If the full amount of the charge mentioned in section 259I (3) is paid to the Territory, the planning and land authority must—
 - (a) revoke the declaration to which the charge relates; and
 - (b) lodge a copy of the revocation with the registrar-general for registration under the *Land Titles Act 1925*; and
 - (c) give a copy of the revocation to the lessee of the charged leasehold and anyone else who has an interest in the leasehold.
- (2) The charge is discharged on the registration under the *Land Titles Act 1925* of the copy of the revocation of the declaration.
- (3) The lessees of a charged leasehold are liable separately and together for the payment to the Territory of the full amount of the charge.
- (4) A registered charge under this section does not give a power of sale over the leasehold to which it relates.

Subdivision 6.3.3 Prohibition notices and injunctions**260 Prohibition notices—making**

- (1) This section applies if the planning and land authority believes, on reasonable grounds, that the giving of a notice under this section (a *prohibition notice*) is necessary to prevent or lessen a significant threat or likelihood of irreversible damage to a thing because of the conduct, or likely conduct, of a controlled activity.
- (2) Also, this section applies whether or not—
 - (a) an order has been made or is proposed to be made in relation to a controlled activity; or
 - (b) a proceeding for an offence against this part has begun or is about to begin.

- (3) The planning and land authority may give a prohibition notice to 1 or more of the following:
- (a) the lessee or occupier of a place to which the controlled activity relates;
 - (b) anyone by whom or on whose behalf the activity—
 - (a) was, is being, or is to be, conducted; or
 - (b) is likely to be conducted.

Note For how documents may be given, see Legislation Act, pt 19.5.

- (4) The prohibition notice must state—
- (a) that it is a prohibition notice under this Act; and
 - (b) each person to whom it is directed; and
 - (c) that the notice takes effect when it is given to a person to whom it is directed; and
 - (d) the grounds on which the notice is given; and
 - (e) the activity, and the place, in relation to which the notice applies; and
 - (f) that the activity—
 - (i) must not be carried on by the person; or
 - (ii) must not be carried on by the person except in accordance with the notice; and
 - (g) when the notice ends (including, for example, on the happening of an event stated in the notice).

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).

- (5) A prohibition notice takes effect when it is given to a person to whom it is directed.
- (6) To remove any doubt, 2 or more prohibition notices may be given in relation to the same activity.

260A Contravening prohibition notices

- (1) A person commits an offence if—
 - (a) the land and planning authority gives a prohibition notice to the person; and
 - (b) the notice is directed to the person; and
 - (c) the notice states that a controlled activity must not be carried on by the person in relation to a place; and
 - (d) the person carries on the activity in relation to the place.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note A Territory authority is not liable to be prosecuted for an offence against this section (see Legislation Act, s 121).

- (2) A person commits an offence if—
 - (a) the land and planning authority gives a prohibition notice to the person; and
 - (b) the notice is directed to the person; and
 - (c) the notice states that a controlled activity must not be carried on by the person in relation to a place except in accordance with the notice; and
 - (d) the person carries on the activity in relation to the place otherwise than in accordance with the notice.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) An offence against this section is a strict liability offence.

260B Prohibition notices—ending

- (1) A prohibition notice remains in force until it ends in accordance with this section.
- (2) A prohibition notice ends on the earlier of the following:
- (a) 60 days after the day it is given to a person to whom the notice is directed;
 - (b) the notice ends in accordance with the notice;
 - (c) the notice is revoked.
- (3) A person to whom a prohibition notice is directed may, in writing, apply to the planning and land authority for the revocation of the notice.
- (4) The application must state the grounds on which the revocation of the prohibition notice is sought.
- (5) The planning and land authority may revoke the prohibition notice if satisfied, on reasonable grounds, that the notice is no longer necessary or appropriate.

260C Injunctions to restrain contravention of orders or prohibition notices

- (1) This section applies if a person (the *relevant person*) has engaged, is engaging, or proposes to engage, in conduct that was, is, or would be, a contravention of an order or a prohibition notice.
- (2) The planning and land authority or anyone else may apply to the Supreme Court for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction—

- (a) restraining the relevant person from engaging in the conduct;
and
 - (b) if, in the court's opinion, it is desirable to do so, requiring the relevant person to do anything.
- (4) The Supreme Court may grant an injunction restraining a relevant person from engaging in conduct of a particular kind—
- (a) if satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind;
or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.
- (5) This section applies whether or not a proceeding for an offence against this part has begun or is about to begin.

Subdivision 6.3.4 Other matters

261 Declaration of pest animal or pest plant

- (1) The Environment Minister may, in writing, declare—
 - (a) an animal to be a pest animal; or
 - (b) a plant to be a pest plant.
- (2) The Environment Minister must not make a declaration unless the Minister has consulted with—
 - (a) the flora and fauna committee under the *Nature Conservation Act 1980*; and

- (b) for a proposed declaration under subsection (1) (a)—the animal welfare advisory committee under the *Animal Welfare Act 1992*.
- (3) After making a declaration, the Environment Minister—
- (a) must arrange for the preparation of a plan for the control of the propagation of the pest animal or plant; and
- (b) if the declaration was made under subsection (1) (a)—may arrange for the preparation of a code of practice under the *Animal Welfare Act 1992* for the pest animal.
- (4) A declaration is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) In subsection (1):
- animal*** means any live vertebrate, but does not include a human being.

9 Conversion of Commonwealth leases

Section 291 (3)

substitute

- (3) In this section:
- prescribed law*** means any of the following laws:
- (a) the *Leases Ordinance 1918*;
- (b) the *Leases (Special Purposes) Ordinance 1925*;
- (c) the *City Area Leases Ordinance 1936*;
- (d) the provisions of a law mentioned in paragraph (a), (b) or (c) as in effect under the *National Land Ordinance 1989*.

- (4) This section (as in force on the commencement of this subsection) applies to a recision, revocation, amendment or variation of a declaration mentioned in subsection (1)—
- (a) that happens after the commencement of this subsection; or
 - (b) that happened on or after 21 December 2000 and before the commencement of this subsection.
- (5) Subsection (4) and this subsection expire 3 months after the day of commencement of this subsection.

Part 3 Public Roads Act 1902

10 Act amended—pt 3

This part amends the *Public Roads Act 1902*.

11 Notices of intention to close unnecessary road New section 19 (1A)

insert

- (1A) However, subsection (1) does not apply if the Minister is of the opinion that it is necessary to partly close the road to give effect to a minor development mentioned in the *Land (Planning and Environment) Regulations 1992*, schedule 4, item 22.

12 Section 19

renumber subsections when Act next republished under Legislation Act 2001

13 New section 20

substitute

20 Closing of roads

- (1) If, after considering all objections (if any) made in accordance with the notice given under section 19 about the closing of a road, the Minister is satisfied that the road should be completely or partly closed, the Minister may, after the month mentioned in the notice, declare, in writing, that the road is completely or partly closed.
- (2) The Minister may, in writing, also declare a road is partly closed if the Minister is of the opinion that it is necessary to give effect to a minor development mentioned in the *Land (Planning and Environment) Regulations 1992*, schedule 4, item 22.

- (3) On the making of a declaration completely or partly closing a road, the land included in the closed road, or closed part of the road, is freed from any rights of the public or anyone to the land as a highway.
- (4) A declaration under this section is a notifiable instrument.

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

Part 5 **Other amendments**

17 **Consequential and other amendments—sch 1**

Schedule 1 amends the Acts and regulations mentioned in it.

Schedule 1 Consequential and other amendments

(see s 17)

Part 1.1 Heritage Objects Act 1991

[1.1] Section 37 (4)

omit

section 256 (5) (b)

substitute

section 257 (2) (Content of orders)

[1.2] Section 40 (7)

omit

section 256 (5)

substitute

section 257 (Content of orders)

Part 1.2 Land (Planning and Environment) Act 1991

[1.3] Section 71 (7)

substitute

- (7) Section 257 (Content of orders) does not apply to an order made for this section.

[1.4] Section 222, definition of *development*, paragraphs (f) and (g)

substitute

- (f) if the land is unleased Territory land—a use of the land that is not authorised by a current licence or permit granted for the land under an Act;
- (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, a current lease or a current permit under the *Roads and Public Places Act 1937*;

[1.5] Section 222, definition of *order*

substitute

order means—

- (a) an order under division 6.3; or
- (b) a decision under another Act that is declared by an Act to be an order for this part.

[1.6] Section 222, new definition of *prohibition notice*

insert

prohibition notice—see section 260 (1).

[1.7] New subdivision 6.2.6

insert

Subdivision 6.2.6 Powers of Supreme Court

253A Injunctions to require compliance with approvals

- (1) This section applies if a person (the *relevant person*) has failed, is failing, or proposes to fail, to do something in accordance with the terms of an approval.
- (2) The planning and land authority or anyone else may apply to the Supreme Court for an injunction requiring the relevant person to do the thing.
- (3) On application under subsection (2), the Supreme Court may grant an injunction requiring the relevant person to do the thing.
- (4) The Supreme Court may grant an injunction requiring the relevant person to do a thing—
 - (a) if satisfied that the person has failed to do the thing, whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the thing; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely the person will fail to do the thing, whether or not the person has previously failed to do the thing and whether or not there is an imminent danger of substantial damage to someone else if the person fails to do the thing.
- (5) This section applies whether or not a proceeding for an offence against this part has begun or is about to begin.

[1.8] Sections 264 and 265

substitute

264 Identity cards

- (1) The planning and land authority must issue an inspector with an identity card that states the person is an inspector for this Act, or for stated provisions of this Act, and shows—
 - (a) a recent photograph of the person; and
 - (b) the name of the person or the particulars that are prescribed under the *Magistrates Court Act 1930* as the identifying particulars for the person (or both); and
 - (c) the date of issue of the card; and
 - (d) a date of expiry for the card; and
 - (e) anything else prescribed under the regulations.
 - (2) A person commits an offence if—
 - (a) the person ceases to be an inspector; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be an inspector.
- Maximum penalty (subsection (2)): 1 penalty unit.
- (3) An offence against this section is a strict liability offence.

265 Power not to be exercised before identity card shown

An inspector may exercise a power under this Act in relation to a person only if the inspector first shows the person his or her identity card.

[1.9] Sections 268 and 270

omit

[1.10] Section 277

substitute

277 Review of decisions—orders and prohibition notices

- (1) Application may be made to the administrative appeals tribunal for review of a decision of the planning and land authority—
 - (a) to make an order under section 254A (2) (Decision on application to planning and land authority for order) or section 256 (2) (Decision on proposed order on planning and land authority's own initiative); or
 - (b) not to make an order under section 254A (2); or
 - (c) to include in an order under section 254A (2) or 256 (2) a direction of a kind mentioned in section 257 (3); or
 - (d) to refuse, under section 258A (4) (Ending of orders), to revoke an order; or
 - (e) to give a prohibition notice under section 260 (3) (Prohibition notices—making); or
 - (f) to refuse, under section 260B (5) (Prohibition notices—ending), to revoke a prohibition notice.
- (2) A notice given by the planning and land authority to a person in accordance with section 257A (a), (b), (c) or (g) (Notice of making of orders) must be in accordance with the requirements of the code of practice under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

[1.11] Schedule 5 heading

omit

(see s 4, s 255)

substitute

(see s 4, s 258)

[1.12] Dictionary, definition of *authorised person*

substitute

authorised person—

- (a) for subdivision 4.4.3 (Procedures and powers)—see section 143; and
- (b) for subdivision 6.3.2 (Rectification work)—see section 259C (1).

[1.13] Dictionary, definition of *pest animal*

substitute

pest animal means an animal declared to be a pest animal under section 261.

[1.14] Dictionary, definition of *pest plant*

substitute

pest plant means a plant declared to be a pest plant under section 261.

[1.15] Dictionary, new definitions of *prohibition notice* and *rectification work*

insert

prohibition notice, for part 6 (Approvals and orders)—see section 260 (1).

rectification work, for subdivision 6.3.2 (Rectification work)—see section 259.

Part 1.3 Land (Planning and Environment) Regulations 1992

[1.16] Regulation 39

omit everything before subregulation (1) (a), substitute

39 Prescribed period—Act, s 254A (4)

- (1) The prescribed period is—

[1.17] Regulation 39

omit

section 256 (1)

substitute

section 254 (1)

[1.18] New regulation 39A

in division 4.3, insert

39A Definition of *minor development*—determined criteria

- (1) The Minister may, in writing, determine criteria for the dictionary, definition of *minor development*, paragraph (h).
- (2) A determination is a notifiable instrument.

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

[1.19] Schedule 4, new item 22

insert

- 22 A minor development to vary a lease only to incorporate into the lease an encroachment onto, over or under unleased Territory land from the lease.

[1.20] Dictionary, definition of *minor development*

omit

, other than a lease variation,

Part 1.4 Land Titles Act 1925

[1.21] Section 72AB

substitute

72AB Registration etc of orders under Land Act

- (1) This section applies if the registrar-general receives a notice under the Land Act, section 257A (Notice of making of orders) or section 258A (Ending of orders) about an order under the Land Act that appears to affect a Crown lease.
- (2) The registrar-general must endorse on the folium of the register constituted by the relevant certificate of title a memorial in accordance with this Act about the making or ending of the order.

Part 1.5 Nature Conservation Act 1980

[1.22] Section 61 (1), notes

substitute

Note 1 A person to whom an order under the *Land (Planning and Environment) Act 1991*, div 6.3 is directed is not required to hold a licence under this Act for any action required to comply with the order in relation to the animal or plant (see that Act, s 258C).

Note 2 If a form is approved under s 80B (Approved forms) for an application, the form must be used.

Note 3 A fee may be determined under s 83A (Determination of fees) for this section.

Schedule 2 Technical amendments of Land (Planning and Environment) Act 1991

(see s 3)

[2.1] New section 4

insert

4 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 the following offences against this Act (see Code, pt 2.1):

- s 258 (Contravening orders)
- s 259B (Contravening direction to carry out rectification work)
- s 259D (1) (Obstructing etc authorised people)
- s 260A (Contravening prohibition notices)
- s 264 (2) (Identity cards).

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, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Explanatory note

This amendment inserts a new standard provision consequent on the Criminal Code. The Code, chapter 2 applies to all offences created after its commencement.

[2.2] Section 186E (2), new definitions

insert

earlier index no—see section 186B, definition of *earlier index number*.

later index no—see section 186B, definition of *later index number*.

Explanatory note

This amendment makes it clear that the abbreviated references to index numbers in section 186E (1) are to the terms as defined in section 186B.

[2.3] Section 222, new definition of *inspector*

insert

inspector means a person appointed as an inspector under section 263 (1).

Explanatory note

This amendment inserts a definition of the term in accordance with current drafting practice.

[2.4] Division 6.4 heading

substitute

Division 6.4 Inspection and seizure powers**Explanatory note**

This amendment makes the division's heading more descriptive of its contents.

[2.5] Section 263

substitute

263 Appointment of inspectors

- (1) The planning and land authority may appoint a person as an inspector for this part.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) An inspector has the functions that the planning and land authority directs.

Explanatory note

This amendment brings the appointment provisions for inspectors into line with current drafting practice.

[2.6] Section 276 heading

substitute

276 Review of decisions—objectors and third parties to approvals

Explanatory note

This amendment makes the section's heading more descriptive of its contents.

[2.7] Section 279 heading

substitute

279 Application for review by objectors—notification to applicants

Explanatory note

This amendment makes the section's heading more descriptive of its contents.

[2.8] Schedule 5, item 12*substitute*

12	parking a heavy vehicle on residential land in contravention of a code of practice under the <i>Road Transport (Safety and Traffic Management) Regulations 2000</i> , division 3.1.3 about the parking of heavy vehicles	20 penalty units
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Explanatory note

This amendment corrects an error in the citation of the regulations.

[2.9] Dictionary, new definition of *inspector**insert*

inspector, for part 6 (Approvals and orders), means a person appointed as an inspector under section 263 (1).

Explanatory note

This amendment is consequential on another amendment.

Endnotes

Republications of amended laws

- 1 For the latest republication of amended laws, see www.legislation.act.gov.au.

Penalty units

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

[Presentation speech made in Assembly on 20 February 2003]

I certify that the above is a true copy of the Land (Planning and Environment) (Compliance) Amendment Bill 2003 which was passed by the Legislative Assembly on 26 June 2003.

Acting Clerk of the Legislative Assembly

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