Australian Capital Territory

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Not all amendments are in force: see last endnote

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About this republication

The republished law

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

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At the republication date, the value of a penalty unit for an offence against this law is $110 for an individual and $550 for a corporation (see *Legislation Act 2001*, s 133).

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Australian Capital Territory

Planning and Development Act 2007

An Act about planning and development in the ACT

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Chapter 1 Preliminary

1 Name of Act

This Act is the *Planning and Development Act 2007*.

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 terms used in this Act, and includes references (***signpost definitions***) to other terms defined elsewhere.

For example, the signpost definition '***conservation requirement***—see the *Heritage Act 2004*, dictionary.' means that the term 'conservation requirement' is defined in that dictionary 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, 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 the Legislation Act, 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*

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

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Chapter 2 Object and important concepts

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) consistent with the social, environmental and economic aspirations of the people of the ACT; and

(b) in accordance with sound financial principles.

Note This Act, like all Territory Acts, has no effect to the extent that it is inconsistent with the national capital plan, but is taken to be consistent with the national capital plan to the extent that it can operate concurrently with it (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 11 (1)).

7 Meaning of *development*

(1) In this Act:

development, in relation to land, means the following:

(a) building, altering or demolishing a building or structure on the land;

(b) carrying out earthworks or other construction work on or under the land;

(c) carrying out work that would affect the landscape of the land;

(d) using the land, or a building or structure on the land;

(e) subdividing or consolidating the land;

(f) varying a lease relating to the land (other than a variation that reduces the rent payable to a nominal rent);

(g) putting up, attaching or displaying a sign or advertising material otherwise than in accordance with a licence issued

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under this Act or permit under the *Roads and Public Places Act 1937*.

(2) In this section:

consolidation—see section 234.

subdivision—

(a) includes—

(i) the surrender of 1 or more leases held by the same lessee, and the grant of new leases to the lessee to subdivide the parcels of land in the surrendered leases; and

(ii) the subdivision of land under the *Unit Titles Act 2001*; and

(iii) the subdivision of land in future urban areas; but

(b) does not include subletting a sublease.

8 Meaning of *use*

In this Act:

use land, or a building or structure on the land, means any of the following:

(a) begin a new use of the land, building or structure;

(b) continue a use of the land, building or structure;

Note Development approval is not required for continuing use lawfully commenced (see s 201 and s 204).

(c) change a use of the land, building or structure, whether by adding a use, stopping a use and substituting another use or otherwise.

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9 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.

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Chapter 3 The planning and land authority and chief planning executive

Part 3.1 The planning and land authority

10 Establishment of authority

(1) The Planning and Land Authority is established.

(2) The planning and land authority—

(a) is a body corporate; and

(b) must have a seal.

(3) The chief planning executive is the planning and land authority.

11 Territory bound by actions of authority

Anything done in the name of, or for, the planning and land authority by the chief planning executive in exercising a function of the authority is taken to have been done for, and binds, the Territory.

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Part 3.2 Functions of planning and land authority

12 Authority functions

(1) The planning and land authority has the following functions:

(a) to prepare and administer the territory plan;

(b) to continually review 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 under the *Districts Act 2002*;

(f) to make available land information;

(g) to grant, administer, vary and end leases on behalf of the Executive;

Note Under s 237 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 controlled activity orders under part 11.3 (Controlled activity orders) and take other compliance and enforcement action under this Act and other territory laws;

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

Note The planning and land authority may only provide planning services to somebody other than the Territory with the Minister's approval (see s 17).

(m) to review its own decisions;

(n) to provide opportunities for community consultation about, and participation in, planning decisions;

(o) 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 planning and land 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, s 196 and dict, pt 1, def ***entity***).

(3) The planning and land authority must exercise its functions—

(a) in a way that, as far as practicable, gives effect to sustainable development; and

(b) taking into consideration the statement of planning intent.

Note 1 For the meaning of ***sustainable development***, see s 9. The statement of planning intent is dealt with in s 16.

Note 2 The planning and land authority must not do anything inconsistent with the territory plan (see s 50) or the national capital plan (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 11).

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13 Authority to comply with directions

The planning and land authority must comply with any directions given to the authority under this Act or another territory law.

Note The Minister may give the planning and land authority directions under s 14, s 62, s 76, s 98, s 100, s 158, s 245 (2) and s 322.

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Part 3.3 Operations of planning and land authority

14 Ministerial directions to authority

(1) The Minister may give a written direction to the planning and land 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, or review the plan.

(2) Before giving a direction the Minister must—

(a) tell the planning and land authority about the proposed direction; and

(b) give the authority a 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 not later than 6 sitting days after the day it is given to the planning and land authority; and

(b) if the copy would not be presented to the Legislative Assembly before the end of the period of 10 working days after the day the direction is given to the authority—give a copy to the members of the Assembly before the end of the 10-day period.

(4) If subsection (3) is not complied with, the direction is taken to have been revoked at the end of the period when the copy of the direction should have been presented or, if the copy should also have been given to members of the Legislative Assembly, when the copy of the direction should have been given to the members.

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(5) A direction is a notifiable instrument.

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

15 Assembly may recommend directions to authority

(1) The Legislative Assembly may, by resolution, recommend that the Minister give the planning and land authority a stated direction under section 14.

(2) The Minister must consider the recommended direction and must either—

(a) direct the planning and land authority under section 14; or

(b) tell the Legislative Assembly that the Minister does not propose to direct the authority as recommended and explain why.

(3) A direction mentioned in subsection (2) (a) may be in accordance with the Legislative Assembly's resolution or as changed by the Minister.

16 Statement of planning intent

(1) The Minister may give the planning and land authority a written statement (the ***statement of planning intent***) that sets out the main principles that are to govern planning and land development in the ACT.

(2) The Minister must—

(a) present a copy of the statement of planning intent to the Legislative Assembly not later than 6 sitting days after the day it is given to the planning and land authority; and

(b) if the copy would not be presented to the Legislative Assembly before the end of the period of 10 working days after the day the statement is given to the authority—give a copy to the members of the Assembly before the end of the 10-day period.

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(3) To remove any doubt, the statement of planning intent does not authorise a person to whom section 50 (Effect of territory plan) applies to do anything inconsistent with the territory 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).

17 Provision of planning services to others—ministerial approval

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

18 Reports by authority to Minister

(1) The planning and land 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 planning and land authority.

19 Authority's annual report

A report prepared by the planning and land 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

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(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*, s 6.

20 Delegations by authority

(1) The planning and land authority may delegate—

(a) the authority's functions under this Act or another territory law to a public servant; and

(b) the authority's functions under part 9.11 (Licences for unleased land) in relation to an area of land to the custodian of the land.

(2) The planning and land 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 the Legislation Act, pt 19.4.

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Part 3.4 The chief planning executive

21 Appointment of chief planning executive

(1) The Executive must appoint a person to be the Chief Planning Executive.

Note 1 For the making of appointments generally, see the Legislation Act, 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, 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, s 208 (1) (c)).

(4) An appointment is a notifiable instrument.

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

22 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*.

23 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.

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24 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, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or

(d) if the chief planning executive is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be 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 not later than the first sitting day after the day the chief planning executive is suspended.

(3) If, not later than 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) before the end of the 6 sitting days—at the end of the 6th sitting day.

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(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, s 210).

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Part 3.5 Authority staff and consultants

25 Authority staff

The planning and land authority's staff must be employed under the *Public Sector Management Act 1994*.

26 Authority consultants

(1) The planning and land authority may engage consultants.

(2) However, the planning and land authority must not enter into a contract of employment under this section.

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Part 3.6 Public register and associated documents

27 Authority to keep public register

(1) The planning and land authority must keep a register (the ***public register***).

(2) The planning and land authority may keep the public register in any form the authority considers appropriate.

28 Contents of public register

(1) The public register must contain the following:

(a) for each development application (unless withdrawn)—

(i) the date the application was lodged; and

(ii) the applicant's name; and

(iii) the location of the proposed development; and

(iv) a summary by the planning and land authority of the proposed development; and

(v) if the application has been, or is being, publicly notified under division 7.3.4; and

(vi) whether the application has been amended under section 144; and

(vii) if representations under section 156 (other than representations that have been withdrawn) have been received on the application; and

(viii) whether the Minister has decided to establish an inquiry panel to inquire about an EIS for the development proposal to which the application relates;

Note Inquiry panels are established under pt 8.3.

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(b) if a development application has been decided under section 162—

(i) the date the application was decided; and

(ii) whether the application has been approved, approved subject to a condition or refused; and

(iii) whether the decision was made by the Minister after calling in the application under division 7.3.5; and

(iv) whether the decision on the application has been reconsidered under division 7.3.10; and

(v) whether the approval has been amended under section 197;

(c) for each lease variation charge for a s 277 chargeable variation of a nominal rent lease—the amounts represented by V_1 and V_2 in section 277 for the charge;

(d) for each remission of an amount of a lease variation charge for a chargeable variation of a nominal rent lease under section 278 to section 278E—

(i) a description of the chargeable variation; and

(ii) the lease variation charge; and

(iii) the amount of the lease variation charge remitted;

(e) for each controlled activity order while the order is in force—

(i) the premises to which the order relates; and

(ii) the directions in the order (see s 358 (3)); and

(iii) the person to whom the order is directed;

(f) for each direction under section 366 to carry out rectification work while the direction is in force—

(i) the premises where the work is to be carried out; and

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(ii) the person directed to carry out the work;

(g) for each prohibition notice given under section 377 while the notice is in force—

(i) the premises to which the notice relates; and

(ii) the person to whom the notice is given.

(2) The public register may contain any other information that the planning and land authority considers appropriate.

(3) However, the public register must not contain—

(a) associated documents for development applications, development approvals or leases; or

Note ***Associated document***—see s 30.

(b) the name of the applicant for a controlled activity order.

(4) To remove any doubt—

(a) if the planning and land authority approves an exclusion application under section 411 in relation to part of a document required to be included on the register, the part of the document must not be included in the register; and

Note A note about the exclusion must be included in the register (see s 411 (7)).

(b) if a document required to be included on the register contains information (***concerning information***) that must not be made available to the public under section 412, the information must not be included in the register.

29 Inspection etc of public register and associated documents

(1) The planning and land authority must ensure that, during business hours, the public register and associated documents are available for public inspection.

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(2) The planning and land authority must allow people inspecting the public register and associated documents to make copies of, or take extracts from, the register and associated documents.

30 Meaning of *associated document*—pt 3.6

(1) For this part, each of the following is an ***associated document*** for a development application (other than an application that has been withdrawn):

(a) information required under section 139 (2) (c), (d) or (f) (i) to accompany an application;

(b) an assessment required under section 139 (2) (e) to accompany the application;

(c) a completed EIS required under section 139 (2) (f) (ii) to accompany the application;

Note For when an EIS is completed, see s 209.

(d) a survey certificate required under section 139 (2) (i) to accompany the application;

(e) if the planning and land authority has asked for further information under section 141—information provided in accordance with the request;

(f) if the planning and land authority corrects the application under section 143—the notice of the correction (see s 143 (2));

(g) if the applicant has asked the authority to amend the development application under section 144—any document provided by the applicant to support the request;

(h) an agreement by an entity to the development proposed in the application (see s 148 (2) (b));

(i) if the application is referred to an entity under division 7.3.3—the advice of the entity in relation to the development application (see s 149 (2));

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(j) if 1 or more representations have been made under section 156 about the application—each representation (other than a representation that has been withdrawn);

(k) if the Minister decides the application—the statement by the Minister in relation to the application presented to the Legislative Assembly under section 161 (2);

(l) the notice of the decision on the application given under division 7.3.8;

(m) if the applicant for the development application applies under section 191 for reconsideration of a decision to refuse to approve the development—any information included in the application;

(n) if the planning and land authority reconsiders a decision to refuse to approve the development—the notice of the decision on reconsideration under section 195;

(o) a plan, drawing or specification of a proposed building, structure or earthworks if the plan, drawing or specification—

(i) is part of the application (whether as originally made or as amended); or

(ii) is approved as part of the approval of the application under section 162; or

(iii) is required to be prepared by the applicant under a condition of an approval before the development, or a stated part it, starts;

(p) if an inquiry panel inquires about an EIS for the development proposal to which the application relates—the report the panel gives the Minister under section 230 on the results of the inquiry.

Note Subsection (3) contains an exception to this subsection.

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(2) For this part, each of the following is an ***associated document*** for a development approval:

(a) if the approval holder applies under section 191 for reconsideration of the decision to approve the development subject to conditions—any information included in the application;

(b) if the planning and land authority reconsiders the decision to approve the development subject to conditions—the notice of the decision on reconsideration under section 195;

(c) if the planning and land authority corrects the approval under section 196—the notice about the correction (see s 196 (2));

(d) if the approval holder has applied to amend the approval under section 197—any information included in the application;

(e) a plan, drawing or specification of a proposed building, structure or earthworks if the plan, drawing or specification is required to be prepared by the applicant under a condition of an approval before the development, or a stated part of it, starts.

(3) However, for this part, an ***associated document*** does not include—

(a) the plans, drawings or specifications of any residential part of a building or proposed building, other than plans, drawings or specifications that only show the height and external configuration of the building or proposed building; or

(b) information in relation to which an exclusion application has been approved under section 411; or

(c) information that must not be made available to the public under section 412.

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Chapter 4 The land development agency

Part 4.1 Establishment and functions of land agency

Note to pt 4.1

The governance of territory authorities, including the land agency, is regulated by the *Financial Management Act 1996* (the ***FMA***), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

31 Establishment of land agency

The Land Development Agency (the ***land agency***) is established.

32 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.

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(4) The land agency must exercise its functions—

(a) in accordance with the object of the territory plan; and

(b) in accordance with the latest statement of intent for the land agency.

Note 1 The land agency is required to prepare a statement of intent under the *Financial Management Act 1996*.

Note 2 For the object of the territory plan, see s 48.

Note 3 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, s 196 and dict, pt 1, def ***entity***).

33 Exercise of land agency functions

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

Note The Minister may give the land agency directions under s 37.

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Part 4.2 Financial and general land agency provisions

Note to pt 4.2

The land agency must not give a guarantee without the Treasurer's written approval (see *Financial Management Act 1996*, s 60).

34 Proceeds of lease sales

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

35 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 to make the payment; and

(b) when to make the payment; 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

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(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 not later than 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 before the end of the period of 10 working days after the day the copy is given to the land agency—give a copy to the members of the Legislative Assembly before the end of the 10-day period.

(5) If subsection (4) is not complied with, the direction is taken to have been revoked at the end of the period when the copy of the direction should have been presented or given to members.

36 Liability for territory taxes

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

37 Ministerial directions to land agency

(1) The Minister may give written directions to the land agency about 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 a 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.

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(4) A direction must be notified under the Legislation Act not later than 10 working 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 10 working days.

38 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 37.

(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.

39 Land agency board 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 chair 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.

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40 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 37 (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*, s 6.

41 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 the Legislation Act, pt 19.4.

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Part 4.3 Land agency board

42 Establishment of land agency board

The land agency has a governing board (the ***land agency board***).

Note An appointment of a governing board member is an appointment under this section (see *Financial Management Act 1996*, s 78 (5) (b)).

43 Land agency board members

(1) The land agency board has at least 5, but not more than 8, members.

Note 1 A chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer of the corporation is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

(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) landscape architecture;

(c) sustainable development;

(d) economics;

(e) public law;

(f) finance or accounting;

(g) public administration;

(h) engineering.

(3) The following people must not be appointed as members of the land agency board:

(a) the chief planning executive;

(b) a member of the planning and land authority staff.

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(4) The appointment of a member, other than the chief executive officer, 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, s 208 and dict, pt 1, def ***appoint***).

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Part 4.4 Land agency staff and consultants

44 Land agency staff

The land agency's staff must 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 a territory instrumentality has the powers of the head of service in relation to the appointment, engagement and employment of instrumentality staff to be employed under the Act. Under that Act, s 3, def ***chief executive officer***, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

45 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.

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Chapter 5 Territory plan

Notes to ch 5

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

Part 5.1 The territory plan, its object and effect

46 Territory plan

There must be a territory plan that applies to the ACT.

Note The territory plan can be varied (see pt 5.3).

47 Public availability of territory plan

(1) The territory plan is a notifiable instrument.

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

(2) On application to the planning and land authority in writing, a person may obtain from the authority a certified copy of, or certified extract from, the territory plan.

Note Under the *Evidence Act 1971*, s 11 and s 12, a certified extract from a document admissible in a proceeding (for example, the territory plan) may be given in evidence to prove the contents of the document and a document purporting to be a certified copy of something is taken to be a certified copy of the thing unless it is proved not to be a certified copy of the thing.

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48 Object of territory plan

The object of the territory plan is to ensure, in a manner not inconsistent with the national capital plan, the planning and development of the ACT provide the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.

49 Giving effect to object of territory plan

(1) The territory plan must give effect to its object in a way that gives effect to sustainability principles.

(2) The territory plan must set out the planning principles and policies, including policies that contribute to achieving a healthy environment in the ACT, for giving effect to its object.

50 Effect of territory plan

The Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the territory plan.

Note 1 The Territory, or a territory authority, is prevented from doing anything inconsistent with the national capital plan.

Note 2 The Territory, the Executive, a Minister or a territory authority are also prevented from doing anything inconsistent with some draft variations of the territory plan (see s 65 and s 72).

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Part 5.2 Contents of territory plan

51 Contents of territory plan

(1) The territory plan must include the following:

(a) a statement of strategic directions;

(b) objectives for each zone;

(c) development tables;

(d) codes;

(e) a map (the ***territory plan map***).

Note For more about development tables, see s 54. For more about codes, see s 55. For more about a territory plan map, see s 56.

(2) The territory plan may, but need not—

(a) identify future urban areas and include the structure plans that apply to those areas; and

(b) identify areas of public land reserved in the plan (whether in a map or elsewhere in the plan) for a purpose mentioned in section 315 (Reserved areas—public land); and

(c) to give effect to the object of the plan—provide for other matters relevant to the exercise of the powers of the Territory, the Executive or a territory authority under a territory law; and

(d) make provision in relation to affordable residential housing; and

(e) include anything else relevant to the object of the territory plan.

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52 Statement of strategic directions

(1) The statement of strategic directions in the territory plan may contain planning principles covering areas of national, regional and Territory interest, including principles for sustainable development.

(2) The function of the statement of strategic directions is to—

(a) contain broad strategic principles to guide long term planning for the ACT; and

(b) guide the preparation and making of variations to the territory plan; and

(c) guide environmental impact statements, planning reports and strategic environmental assessments.

(3) The statement of strategic directions in the territory plan should promote the planning strategy.

53 Objectives for zones

(1) The objectives for a zone set out the policy outcomes intended to be achieved by applying the applicable development table and code to the zone.

(2) Each objective for a zone must be consistent with the statement of strategic directions.

54 Development tables

(1) A development table for a zone must set out—

(a) the minimum assessment track that applies to each development proposal; and

Note Assessment tracks are dealt with in ch 7.

(b) development that is exempt from requiring development approval; and

Note Exempt developments are further dealt with in div 7.2.6.

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(c) development that is prohibited; and

(d) the code that development proposals must comply with.

(2) A development table may exempt a development proposal from requiring development approval subject to a condition.

Example of possible condition

A development proposal is exempt from requiring development approval if the building plans for the proposal comply with a code that applies to single residences in the development table that applies to the proposal.

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) The assessment tracks, from minimum to maximum, are as follows:

(a) code track;

(b) merit track;

(c) impact track.

55 Codes in territory plan

(1) A code (other than a general code or precinct code that is a concept plan) in the territory plan must contain either or both of the following:

(a) the detailed rules that apply to development proposals the code applies to;

(b) the criteria that apply to development proposals the code applies to, other than proposals in the code track.

(2) A code must be consistent with each objective for the zone to which the code relates.

(3) A code that sets out the requirements that apply to stated areas, or places, or states that it is a precinct code, is a ***precinct code***.

Note A concept plan is a precinct code (see s 93 (b)).

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(4) A code that sets out the requirements for types of development, or states that it is a development code, is a ***development code***.

(5) A code that sets out requirements applicable to the Territory, the Executive, a Minister or a Territory authority is a ***general code***.

(6) To remove any doubt, a general code may also contain—

(a) policies to be complied with; and

(b) rules and criteria applicable to development proposals the code applies to.

56 Territory plan map

The territory plan map must set out, in map-form, zones and precincts in the ACT.

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Part 5.3 Variations of territory plan other than technical amendments

Note to pt 5.3

The planning and land authority has obligations under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth) in relation to the variation of the territory plan (see that Act, s 74 and s 75).

Division 5.3.1 Overview, interpretation and application—pt 5.3

57 How territory plan is varied under pt 5.3

(1) A variation of the territory plan (other than a technical amendment) begins when—

(a) the planning and land authority prepares a draft plan variation (see s 60); or

(b) the Minister directs the authority to revise the territory plan or a provision of the plan (see s 14 (1) (b)).

Note For territory plan variations that are technical amendments, see pt 5.4 and pt 5.5.

(2) If the planning and land authority prepares a draft plan variation, the authority must prepare a consultation notice (see s 63) that invites comments on the draft plan variation and, when publicly notified, may give the draft plan variation interim effect (see s 64 and s 65).

(3) The planning and land authority—

(a) may revise or withdraw the draft plan variation after the end of public consultation (see s 68); and

(b) unless the variation is withdrawn, must—

(i) give the variation to the Minister for approval (see s 69); and

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(ii) give notice that the variation and other documents are available for public inspection (see s 70).

(4) If notice is given of the draft plan variation's availability for inspection, the draft plan variation notified may have interim effect (see s 71 and s 72).

(5) The Minister may, after receiving a committee report about the draft plan variation or in other circumstances, approve the plan variation, or take other action under section 76 (Minister's powers in relation to draft plan variations).

(6) The Minister may revoke an approval of a draft plan variation before presenting the approved plan variation to the Legislative Assembly (see s 77), but otherwise must present the approved plan variation to the Legislative Assembly (see s 79).

(7) The Legislative Assembly may reject the plan variation (see s 80) but, if the plan variation, or a provision of the plan variation, is not rejected, the Minister must fix a day when the variation commences (see s 83).

(8) Different provisions apply to plan variations that are technical amendments (see s 87), including future urban areas (see pt 5.4 and pt 5.5, particularly s 95).

58 Definitions—pt 5.3

In this part:

background papers, in relation to a draft plan variation or plan variation—each of the following is a ***background paper*** in relation to the variation:

(a) an explanatory statement;

(b) a copy of—

(i) any relevant direction of the Minister; and

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(ii) any comment during consultation under section 61 (b) on the proposed draft plan variation from which the draft plan variation or plan variation came; and

(iii) any relevant planning report or strategic environmental assessment;

(c) a statement, by the planning and land authority, of the reasons for any inconsistency between the draft plan and—

(i) a direction mentioned in paragraph (b) (i); or

(ii) a comment mentioned in paragraph (b) (ii); or

(iii) a recommendation in a relevant planning report or strategic environmental assessment;

(d) any other document—

(i) considered by the authority to be necessary or useful in explaining the variation; or

(ii) designated by the authority in writing as a background paper.

consultation comments, in relation to a draft plan variation—see section 63 (1) (b).

consultation notice, for a draft plan variation—see section 63 (1).

consultation period, for a draft plan variation—see section 63 (1) (a).

corresponding plan variation, for a draft plan variation, means the plan variation developed from the draft plan variation.

draft plan variation—see section 60.

plan variation means a draft plan variation approved by the Minister under section 76 (Minister's powers in relation to draft plan variations).

public availability notice, for a draft plan variation—see section 70.

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technical amendments—see section 87.

59 Pt 5.3 does not apply to technical amendments

This part does not apply to technical amendments of the territory plan.

Division 5.3.2 Consultation on draft plan variations

60 Preparation of draft plan variations

The planning and land authority may prepare a document (a ***draft plan variation***) to vary the territory plan.

61 Consultation etc about draft plan variations being prepared

The planning and land authority must, in preparing a draft plan variation under section 60—

(a) tell the Minister in writing that the authority is preparing a draft plan variation; and

(b) consult with each of the following in relation to the proposed draft plan variation:

(i) the national capital authority;

(ii) the conservator of flora and fauna;

(iii) the environment protection authority;

(iv) the heritage council;

(v) if the draft plan variation would, if made, be likely to affect unleased land or leased public land—each custodian for the land likely to be affected; and

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(c) consider any relevant planning report or strategic environmental assessment; and

Note The planning and land authority may prepare a planning report or strategic environmental assessment in relation to the proposed draft plan variation (see s 98 and s 100).

(d) if the draft plan variation would, if made, vary the statement of strategic directions—consider whether the draft plan variation, if made, would promote the planning strategy.

62 Ministerial requirements for draft plan variations being prepared

(1) This section applies if the authority tells the Minister under section 61 that the authority is preparing a draft plan variation.

(2) The Minister may direct the planning and land authority to do 1 or both of the following:

(a) to prepare a planning report or strategic environmental assessment in relation to the draft plan variation that the authority is preparing;

(b) to tell the Minister when the draft plan variation being prepared is ready to be notified under section 63.

Note 1 The planning and land authority must comply with a direction given by the Minister (see s 13).

Note 2 Requirements for planning reports and strategic environmental assessments are dealt with in pt 5.6.

(3) To remove any doubt, the validity of a corresponding plan variation for a draft plan variation is not affected by a failure to comply with subsection (2) (b) in relation to the draft plan variation.

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63 Public consultation—notification

(1) Before giving a draft plan variation to the Minister for approval under section 69, the planning and land authority must prepare a notice (a ***consultation notice***)—

(a) stating that copies of the draft plan variation and the background papers are available for public inspection and purchase during a stated period of not less than 15 working days (the ***consultation period***) at stated places; and

(b) inviting people to give written comments (***consultation comments***) about the draft plan variation to the authority at a stated address during the consultation period; and

(c) stating that copies of written comments about the draft plan variation, given in response to the invitation in paragraph (b) or otherwise, or received from the national capital authority, will be made available (unless exempted) for public inspection for a period of at least 15 working days starting on the day after the day the consultation period ends, at stated places; and

(d) that complies with section 64.

(2) The planning and land authority may (by an ***extension notice***), extend or further extend the consultation period.

Note The planning and land authority may extend the consultation period after the end of the period being extended (see Legislation Act, s 151C (3)).

(3) The following are notifiable instruments:

(a) the consultation notice;

(b) any extension notice.

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

(4) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

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(5) The planning and land authority must also publish the consultation notice and any extension notice in a daily newspaper.

Note The planning and land authority must make copies of the draft plan variation and background papers mentioned in the consultation notice available (see s 66).

(6) This section does not apply in relation to a draft plan variation that has been revised by the planning and land authority in accordance with a direction under section 76 (3) (b) (Minister's powers in relation to draft plan variations).

64 Public consultation—notice of interim effect etc

(1) A consultation notice must state—

(a) whether or not section 65 applies in relation to the draft plan variation, or part of the draft variation; and

(b) where further information about the draft plan variation can be found.

(2) A consultation notice that states that section 65 applies—

(a) must also state the effect of section 65; and

(b) may also state, for section 65 (2), a period not longer than 1 year that is the maximum period during which the draft variation, or part, is to have interim effect.

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65 Effect of draft plan variations publicly notified

(1) This section applies to a draft plan variation if a consultation notice states that it applies.

(2) The Territory, the Executive, a Minister or a territory authority must not, during the defined period or a period stated in the consultation notice, whichever is shorter, do or approve the doing of anything that would be inconsistent with the territory plan if it were varied in accordance with the draft plan variation.

Note The Territory, the Executive, a Minister or a territory authority must also not do anything that is inconsistent with the territory plan (see s 50).

(3) In this section:

defined period, for a draft plan variation, means the period—

(a) starting on the day (the ***notification day***) when the consultation notice for the draft plan variation is notified under the Legislation Act (see s 63); and

(b) ending on the day the earliest of the following happens:

(i) the day the public availability notice under section 70 for the draft plan variation is notified in accordance with the Legislation Act;

(ii) the day the draft variation, or the corresponding plan variation, is withdrawn under section 68 (1) (b) or section 76 (3) (b) (v);

(iii) the period of 1 year after the notification day ends.

draft plan variation includes a provision of a draft plan variation.

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66 Public consultation—availability of draft plan variations etc

(1) The planning and land authority must make copies of the draft plan variation and the background papers mentioned in a consultation notice available for public inspection and purchase during office hours during the consultation period and at the places stated in the consultation notice.

(2) However, the planning and land authority must not make a part of the draft plan variation or of a background paper available under subsection (1) if satisfied that publication of the part—

(a) would disclose a trade secret; or

(b) would, or could reasonably be expected to—

(i) endanger the life or physical safety of anyone; or

(ii) lead to damage to, or theft of, property.

(3) If part of a draft plan variation or a background paper is not made available under subsection (1) because of the operation of subsection (2), each copy of the draft plan variation or background paper made available must include—

(a) a statement to the effect that an unmentioned part of the document has been excluded; and

(b) the reason for the exclusion.

67 Public inspection of comments on draft plan variations

The planning and land authority must make copies of any consultation comments made on a draft plan variation available for public inspection during office hours during the period, and at the places, mentioned in the consultation notice for the draft plan variation.

Note This section is subject to s 411 and s 412.

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Division 5.3.3 Action after consultation about draft plan variations

68 Revision and withdrawal of draft plan variations

(1) After the end of the consultation period for a draft plan variation, the planning and land authority may—

(a) revise the draft plan variation; or

(b) withdraw the draft plan variation.

(2) The withdrawal of a draft plan variation must include a statement of the effect of section 65 (Effect of draft plan variations publicly notified) in relation to the withdrawal.

(3) The withdrawal of a draft plan variation is a notifiable instrument.

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

(4) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

(5) The planning and land authority must also publish the withdrawal of a draft plan variation in a daily newspaper on the same day, or as soon as practicable after, the authority prepares the withdrawal.

(6) In revising or withdrawing a draft plan variation under subsection (1), the planning and land authority must consider written comments (including consultation comments) about the draft variation received from any entity, including the national capital authority.

(7) In addition to its power under subsection (1), the planning and land authority may, at any time before a draft plan variation is given, or given again, to the Minister, revise the variation to correct a formal error.

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Division 5.3.4 Draft plan variations given to Minister

69 Draft plan variations to be given to Minister etc

(1) This section applies to a draft plan variation—

(a) if—

(i) the consultation period for the variation has ended; and

(ii) the planning and land authority has not withdrawn the variation under section 68; and

(b) if the draft plan variation has been varied under section 68—as varied under section 68.

(2) The planning and land authority must give the draft plan variation to the Minister for approval, together with—

(a) the background papers relating to the variation; and

(b) a written report setting out the issues raised in any written comments (including consultation comments) about the variation; and

(c) a written report about the authority's consultation with—

(i) the public; and

(ii) the national capital authority; and

(iii) the conservator of flora and fauna; and

(iv) the environment protection authority; and

(v) the heritage council; and

(vi) if the draft plan variation would, if made, be likely to affect unleased land or leased public land—each custodian for the land likely to be affected; and

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(d) a copy of any written document given to the Minister by the national capital authority in relation to the draft plan variation.

Note The Minister must give a copy of the documents given to the Minister under this section to a committee of the Legislative Assembly (see s 73).

70 Public notice of documents given to Minister

(1) The planning and land authority must prepare a notice (a ***public availability notice***) stating that the documents mentioned in section 69 (2) (including the draft plan variation) are available for public inspection.

(2) A public availability notice is a notifiable instrument.

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

(3) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

(4) The planning and land authority must also publish a public availability notice in a daily newspaper.

(5) The planning and land authority must make copies of the documents mentioned in section 69 (2) available for public inspection during office hours during the period, and at the places, stated in the public availability notice.

71 Public availability notice—notice of interim effect etc

(1) A public availability notice must state—

(a) whether or not section 72 applies in relation to the draft plan variation, or part of the draft variation; and

(b) where further information about the draft plan variation can be found.

(2) A public availability notice that states that section 72 applies must also state the effect of section 72.

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72 Effect of draft plan variations given to Minister

(1) This section applies to a draft plan variation if a public availability notice states that it applies.

(2) The Territory, the Executive, a Minister or a territory authority must not, during the defined period, do or approve the doing of anything that would be inconsistent with the territory plan if it were varied in accordance with the draft plan variation.

Note The Territory, the Executive, a Minister or a territory authority must also not do anything that is inconsistent with the territory plan (see s 50).

(3) In this section:

defined period, for a draft plan variation, means the period—

(a) starting on the day (the ***notification day***) when the draft plan variation given to the Minister is notified under the Legislation Act (see s 70); and

(b) ending on the earliest of the following days:

(i) the day the corresponding plan variation, or part of it, commences;

Note The Minister must fix a day for the variation, or part of it, to commence under s 83 or s 84.

(ii) the day the corresponding plan variation is rejected by the Legislative Assembly;

(iii) the day the corresponding plan variation is withdrawn in accordance with a requirement under section 76 (3) (b) (v) or section 84 (3) (b);

(iv) the period of 1 year after notification day ends.

draft plan variation includes a provision of a draft plan variation.

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Division 5.3.5 Consideration of draft plan variations by Assembly committee

73 Consideration of draft plan variations by Legislative Assembly committee

(1) This section applies if the Minister is given a draft plan variation under section 69.

(2) The Minister may, not later than 20 working days after the day the Minister receives the draft plan variation, refer the draft plan variation documents to an appropriate committee of the Legislative Assembly together with a request that the committee report on the draft plan variation to the Legislative Assembly.

(3) To remove any doubt, if the Minister does not refer a draft plan variation to an appropriate committee of the Legislative Assembly, the committee is not prevented from considering the draft plan variation documents if the draft plan variation is otherwise referred to the committee.

(4) In this section:

draft plan variation documents means—

(a) the draft plan variation; and

(b) the documents mentioned in section 69 (2) that relate to the draft plan variation.

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74 Committee reports on draft plan variations

(1) This section applies if the Minister has referred a draft plan variation to a committee of the Legislative Assembly under section 73.

(2) The Minister—

(a) unless section 75 applies, must not take action under section 76 in relation to the draft plan variation until the committee of the Legislative Assembly has reported on the variation; and

(b) after the committee reports on the variation—must take action under section 76 in relation to the variation.

75 Committee fails to report promptly on draft plan variations

(1) This section applies if—

(a) the Minister has referred a draft plan variation to a committee of the Legislative Assembly under section 73; and

(b) the committee has not reported on the variation by the end of the period of 6 months starting on the day after the day the variation is referred.

(2) The Minister may take action under section 76 in relation to the draft plan variation, even though the committee of the Legislative Assembly has not reported on the variation.

Division 5.3.6 Ministerial and Legislative Assembly action on draft plan variations

76 Minister's powers in relation to draft plan variations

(1) This section applies if—

(a) the Minister is given a draft plan variation under section 69 or section 78 (3) or (4); or

(b) the Minister revokes the approval of a plan variation (see s 77).

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(2) However, this section does not apply if—

(a) a draft plan variation has been referred to an appropriate committee of the Legislative Assembly (other than under section 73); and

(b) either—

(i) the committee has not reported on the draft plan variation; or

(ii) the committee has reported, but the Minister has not considered the report.

(3) The Minister must—

(a) approve the draft plan variation in the form given; or

Note A draft plan variation approved by the Minister is a plan variation (see s 58, def ***plan variation***).

(b) return the draft plan variation to the planning and land authority and direct the authority to do 1 or more of the following:

(i) conduct further stated consultation;

(ii) consider any relevant planning report or strategic environmental assessment;

(iii) consider any revision suggested by the Minister;

(iv) revise the draft plan variation in a stated way;

(v) withdraw the draft plan variation.

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(4) Before taking action under subsection (3), the Minister must consider—

(a) any recommendation made by a committee of the Legislative Assembly in relation to the draft variation, or related documents, referred to the committee under section 73 or otherwise; and

(b) if the draft plan variation would, if made, vary the statement of strategic directions—whether the variation would promote the planning strategy.

Note—par (a)

The Minister must not take action under this section in some circumstances if the committee has not reported (see s 74 and s 75).

Note—par (b)

The territory plan has no effect to the extent that it is inconsistent with the national capital plan, but is taken to be consistent with the national capital plan to the extent that it can operate concurrently with it (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 26).

(5) If the Minister directs the withdrawal of a draft plan variation by the planning and land authority under subsection (3) (b) (v), the authority must prepare a notice stating that the draft plan variation is withdrawn.

(6) The following are notifiable instruments:

(a) an approval under subsection (3) (a);

(b) a direction under subsection (3) (b);

(c) a notice under subsection (5).

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

(7) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

(8) The planning and land authority must also publish the notice under subsection (5) in a daily newspaper.

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77 Minister may revoke approval of draft plan variations before presentation

(1) This section applies if—

(a) the Minister has approved a draft plan variation under section 76 (3) (a); and

(b) the plan variation has not been presented to the Legislative Assembly.

(2) The Minister may revoke the approval and return the plan variation to the planning and land authority.

(3) A plan variation returned to the planning and land authority under this section must be treated by the Minister as a draft plan variation to which section 76 applies.

78 Return of draft plan variations to authority

(1) This section applies if the Minister returns a draft plan variation to the planning and land authority with a direction under section 76 (3) (b).

(2) The planning and land authority must comply with each direction.

(3) If the direction is given under section 76 (3) (b) (i), (ii) or (iii), the planning and land authority may revise the draft variation and give it to the Minister for approval with a written report about—

(a) the authority's compliance with the Minister's direction; and

(b) any further revision of the draft variation under section 68 (7).

(4) If the direction is given under section 76 (3) (b) (iv), the planning and land authority must give the Minister the draft variation, as revised in accordance with the direction, together with a written report about any further revision of the draft variation under section 68 (7).

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79 Presentation of plan variations to Legislative Assembly

(1) The Minister must present to the Legislative Assembly, not later than 5 sitting days after the day the Minister approves a plan variation, copies of each the following:

(a) the plan variation;

(b) the background papers relating to the variation;

(c) any report mentioned in section 78 (3) or (4).

(2) Subsection (1) is subject to section 77 (Minister may revoke approval of draft plan variations before presentation).

(3) If a plan variation is not presented to the Legislative Assembly in accordance with subsection (1), the plan variation does not come into effect.

80 Assembly may reject plan variations completely or partly

(1) The Legislative Assembly may by resolution reject a plan variation, or a provision of the plan variation, presented to the Assembly.

(2) Notice (a ***rejection notice***) of a motion to reject the plan variation or a provision of the plan variation must be given not later than 5 sitting days after the day the plan variation is presented to the Legislative Assembly.

(3) The plan variation or provision stated in a rejection notice given in accordance with subsection (2) is taken to have been rejected by the Legislative Assembly if, at the end of 5 sitting days after the day the rejection notice has been given in the Legislative Assembly—

(a) the motion has not been called on; or

(b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.

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81 Effect of dissolution etc of Legislative Assembly

(1) This section applies if, before the end of 5 sitting days after the day a rejection notice has been given in the Legislative Assembly in accordance with section 80 (2)—

(a) the Legislative Assembly is dissolved or expires; and

(b) at the time of dissolution or expiry—

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.

(2) If this section applies, the plan variation is taken, for section 80 (2) and (3), to have been presented to the Legislative Assembly on the first sitting day of the Legislative Assembly after the next general election of members of the Assembly.

82 Consequences of rejection of plan variations by Legislative Assembly

(1) This section applies if a plan variation is completely rejected under section 80 (1), or taken to be completely rejected under section 80 (3).

(2) The plan variation does not come into force if this section applies.

Note The interim effect of the draft plan variation also ends (see s 72 (3), def ***defined period***, par (b) (ii)).

(3) The planning and land authority must prepare a notice stating that the plan variation has been rejected.

(4) The notice is a notifiable instrument.

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

(5) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

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(6) The planning and land authority must also publish the notice in a daily newspaper on the same day, or as soon as practicable after, the rejection is notified under the Legislation Act.

Division 5.3.7 Commencement and publication of plan variations

83 Commencement and publication of plan variations

(1) This section applies if—

(a) at the end of 5 sitting days after the day a plan variation is presented to the Legislative Assembly, the Assembly has not passed a resolution rejecting the variation or any provision of it; and

(b) the plan variation, or a provision of the plan variation, is not taken to have been rejected under section 80 (3).

(2) The Minister must fix a day when the plan variation is to commence.

Note 1 An instrument under this subsection is a ***commencement notice*** (see Legislation Act, s 11). A commencement notice must be notified under the Legislation Act. The plan variation commences in accordance with the commencement notice.

Note 2 On commencement, a plan variation varies the territory plan according to its terms.

(3) The planning and land authority must publish in a daily newspaper details of—

(a) the commencement notice under subsection (2); and

(b) where copies of the plan variation may be inspected or purchased.

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(4) The planning and land authority must make copies of the plan variation available for inspection or purchase during office hours at the places, and during the period, published in the newspaper under subsection (3) (b).

84 Partial rejection of plan variations by Legislative Assembly

(1) This section applies if a plan variation is partly rejected under section 80 (1) (Assembly may reject plan variations completely or partly), or taken to be partly rejected under section 80 (3).

(2) A provision of a plan variation does not come into force if—

(a) it is rejected, or taken to be rejected, by the Legislative Assembly under section 80 (1) or (3); or

(b) it is withdrawn under subsection (3) (b).

(3) The Minister must, in relation to each provision of the plan variation that is not rejected—

(a) fix a day when the provision (an ***approved provision***) is to commence; or

(b) withdraw the provision.

Note 1 An instrument under par (a) is a ***commencement notice*** (see Legislation Act, s 11). A commencement notice must be notified under the Legislation Act.

Note 2 On commencement, a provision of a plan variation varies the territory plan according to its terms.

(4) A withdrawal under subsection (3) (b) is a notifiable instrument.

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

(5) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

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85 Partial rejection of plan variations—publication etc

(1) The planning and land authority must publish in a daily newspaper details of—

(a) a commencement notice under section 84 (3) (a) for a provision (an ***approved provision***); or

(b) a withdrawal notice under section 84 (3) (b).

(2) The details of a commencement notice published under subsection (1) (a) for an approved provision must include details of where, and for what period, copies of the provision may be inspected or purchased.

(3) The planning and land authority must make copies of each approved provision available for inspection or purchase during office hours at the place or places, and during the period, published in the newspaper under subsection (2).

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Part 5.4 Plan variations—technical amendments

86 Definitions—pt 5.4

In this part:

code variation—see section 87 (b).

error variation—see section 87 (a).

limited consultation—see section 90.

technical amendment—see section 87.

87 What are *technical amendments* of territory plan?

Each of the following territory plan variations is a ***technical amendment***:

(a) a variation (an ***error variation***) that—

(i) would not adversely affect anyone's rights if approved; and

(ii) has as its only object the correction of a formal error in the plan;

(b) a variation (a ***code variation***) that—

(i) would only change a code; and

(ii) is consistent with the policy purpose and policy framework of the code; and

(iii) is not an error variation;

(c) a variation in relation to a future urban area under section 95 (Rezoning—future urban areas) or section 96 (When land ceases to be in future urban area);

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(d) a variation to change the boundary of a zone or overlay under section 96A (Rezoning—boundary changes);

(e) a variation required to bring the territory plan into line with the national capital plan;

(f) a variation to omit something that is obsolete or redundant in the territory plan;

Examples—obsolete or redundant things

1 a structure plan that is no longer relevant because all the land that the structure plan applies to ceases to be in a future urban area

2 a provision of the territory plan that has become redundant because of the enactment of a law that applies in the Territory

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).

(g) a variation to clarify the language in the territory plan if it does not change the substance of the plan.

88 Is consultation needed for technical amendments?

(1) Only limited consultation is needed for the following technical amendments:

(a) a code variation;

(b) a variation in relation to a future urban area under section 95 (Rezoning—future urban areas);

(c) a variation to clarify the language in the territory plan if it does not change the substance of the plan.

(2) A technical amendment, other than a technical amendment for which limited consultation is needed, does not need any consultation before it is made under section 89.

89 Making technical amendments

(1) This section applies if—

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(a) the planning and land authority is satisfied that a plan variation would, if made, be a technical amendment; and

(b) any limited consultation needed for the variation has taken place.

Note Section 88 sets out when limited consultation is needed.

(2) The planning and land authority may put the plan variation (incorporating any amendments made to the variation following the limited consultation) in writing.

(3) The plan variation is a notifiable instrument.

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

(4) The planning and land authority must fix a day when the plan variation is to commence.

Note 1 An instrument under this subsection is a ***commencement notice*** (see Legislation Act, s 11). A commencement notice must be notified under the Legislation Act. The plan variation commences in accordance with the commencement notice.

Note 2 On commencement, a plan variation varies the territory plan according to its terms.

(5) Not later than 5 working days after the day the plan variation is notified under the Legislation Act, the planning and land authority must publish a notice in a daily newspaper that—

(a) describes the variation; and

(b) states the date of effect of the variation; and

(c) if the authority considers it necessary or helpful—states where the plan variation and information about the plan variation is available for inspection.

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90 Limited consultation

(1) The planning and land authority undertakes ***limited consultation*** for a proposed technical amendment if the authority complies with this section in relation to the amendment.

(2) The planning and land authority must publish a notice in a daily newspaper that—

(a) describes the proposed technical amendment; and

(b) states where a copy of the proposed plan variation and information about the amendment is available for inspection; and

(c) states how and when written comments (***consultation comments***) may be made on the amendment; and

(d) states that a copy of any consultation comments made under paragraph (c) will be made available for inspection for at least 15 working days starting on the day after the period under paragraph (c) ends, at stated places.

Note Sections 411 and 412 apply to a person who makes consultation comments under this section.

(3) The planning and land authority must make the documents mentioned in subsection (2) (b) and (d) available for inspection as mentioned in the notice.

(4) The period stated under subsection (2) (c) for making consultation comments must be at least 15 working days.

(5) The planning and land authority must tell the national capital authority about the proposed technical amendment.

(6) The planning and land authority must consider—

(a) any consultation comments made in accordance with the notice under subsection (2); and

(b) any views of the national capital authority.

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Part 5.5 Plan variations—structure plans and rezoning

91 Including structure plan by plan variation

The territory plan may be varied under part 5.3 to include a structure plan.

92 What is a *structure plan*?

A ***structure plan*** sets out principles and policies for development of the future urban areas.

Note 1 Future urban areas may be identified in the territory plan (see s 51 (2) (a)).

Note 2 Certain development may be prohibited in future urban areas (see s 136).

93 What is a *concept plan*?

A ***concept plan***—

(a) applies the principles and policies in the structure plan to future urban areas; and

(b) is a precinct code in the territory plan (see s 55 (3)) that guides—

(i) the preparation and assessment of development in future urban areas to which the concept plan relates; and

(ii) assessment of development when the areas cease to be future urban areas.

94 What is an *estate development plan*?

(1) An ***estate development plan***, for an estate, sets out the proposed development of the estate in a way that is consistent with—

(a) the concept plan (if any) for the area where the estate is; and

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(b) any other code that applies to the estate.

(2) An estate development plan must contain—

(a) the block boundaries for individual blocks proposed for inside the estate and the boundaries proposed for the whole estate; and

(b) the zones proposed for the estate, and any existing zones that are to continue to apply.

(3) An estate development plan may include the following for the estate:

(a) design and construction requirements for roads;

(b) design and construction requirements for infrastructure works and landscaping;

(c) particular areas for particular detailed purposes;

(d) building envelopes;

(e) a tree management plan;

(f) design and construction requirements for reticulated services;

(g) design and construction requirements for works on proposed public land.

Example for par (c)

An area zoned for community purposes may be stated in an estate development plan to be proposed for a primary school.

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).

95 Rezoning—future urban areas

(1) The planning and land authority may vary the territory plan under section 89 (Making technical amendments) to rezone land in a

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future urban area unless the rezoning is inconsistent with the principles and policies in the structure plan for the area.

(2) The planning and land authority may vary the territory plan under section 89 to change the boundary of a future urban area if the change is consistent with the structure plan for the area.

(3) However, the planning and land authority must not vary the territory plan under section 89 to change the boundary of a future urban area if part of the boundary proposed to be changed is aligned with the boundary of an existing leasehold.

96 When land ceases to be in future urban area

(1) This section applies to an area of land dealt with by an estate development plan if the plan is approved under a development application.

(2) The planning and land authority must, within a reasonable time after the approval of the estate development plan, vary the territory plan under section 89 (Making technical amendments) to—

(a) identify the zones that will apply to the land, consistent with the estate development plan; and

(b) incorporate any other element of the estate development plan that the estate development plan indicates should be ongoing.

(3) A variation of the territory plan under subsection (2) has the effect that the land dealt with by the estate development plan ceases to be in a future urban area.

96A Rezoning—boundary changes

(1) The planning and land authority may vary the territory plan under section 89 (Making technical amendments) to change the boundary of a zone or overlay if the change is consistent with—

(a) the apparent intent of the original boundary line; and

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(b) the objective for the zone.

(2) However, the planning and land authority must not vary the territory plan under section 89 to change the boundary of the zone if part of the boundary proposed to be changed is aligned with the boundary of an existing leasehold.

Examples—changes allowed

1 boundary change consistent with more detailed survey work that reveals copse of trees further away from boundary than intended

2 boundary change to align boundary to boundaries of nearby, recently-created leases

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).

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Part 5.6 Planning reports and strategic environmental assessments

97 What is a *planning report*?

(1) A ***planning report*** is a report prepared to inform a decision to be made under this Act, for example, whether to grant a lease or prepare a variation (other than a major variation) to the territory plan.

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) A regulation may prescribe what must be included in a planning report.

(3) In this section:

major variation, of the territory plan, means a variation that would, because of its scope or significance to the ACT, be more appropriately assessed by a strategic environmental assessment.

98 Preparation of planning reports

(1) The planning and land authority must prepare a planning report if the Minister directs the authority to prepare a planning report in accordance with this Act.

Note The Minister may direct the planning and land authority to prepare a planning report under s 62 and s 245 (2).

(2) The planning and land authority may prepare a planning report if satisfied that it is necessary or convenient to do so in relation to a matter relevant to the object of this Act.

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99 What is a *strategic environmental assessment*?

A ***strategic environmental assessment*** is a comprehensive environmental assessment, suited to proposals in relation to major policy matters rather than individual development proposals.

Examples of when SEA may be prepared

1 major land use policy initiative

2 major plan variation

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).

100 Preparation of strategic environmental assessments

(1) The planning and land authority must prepare a strategic environmental assessment if the Minister directs the authority to prepare the assessment in relation to a matter relevant to the object of this Act or this Act otherwise requires the authority to prepare an assessment.

Note The Minister may direct the planning and land authority to prepare a strategic environmental assessment under s 62 (2) (a). The authority is required to prepare an assessment under s 103 (2).

(2) The planning and land authority may prepare a strategic environmental assessment if satisfied that it is necessary or convenient to do so in relation to a matter relevant to the object of this Act.

101 Regulation about strategic environmental assessments

A regulation may prescribe—

(a) how a strategic environmental assessment must or may be developed; and

(b) what a strategic environmental assessment must or may contain; and

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(c) how recommendations made in a strategic environmental assessment are to be weighed in making any decision in relation to the matter assessed.

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Part 5.7 Review of territory plan

102 Consideration of whether review of territory plan necessary

(1) The planning and land authority must, at least once every 5 years, consider whether the territory plan should be reviewed.

Note The planning and land authority must review the territory plan if directed to do so by the Minister (see s 14 (1) (b) and s 13) or if the authority decides the plan should be reviewed (see s 103).

(2) In deciding whether the territory plan should be reviewed, the planning and land authority must consider whether the territory plan—

(a) is consistent with the object of this Act; and

(b) is consistent with its object; and

(c) gives effect to its object in a way that is not inconsistent with the national capital plan; and

(d) gives effect to its object in a way that gives effect to sustainability principles; and

(e) promotes the planning strategy; and

(f) meets current community and building industry expectations.

(3) After the planning and land authority considers whether the territory plan should be reviewed, the authority must prepare a notice stating—

(a) that the authority has considered whether the plan should be reviewed; and

(b) the authority's decision on whether the plan should be reviewed; and

(c) the date of the authority's decision.

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(4) A notice under subsection (3) is a notifiable instrument.

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

(5) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

(6) To remove any doubt—

(a) the planning and land authority need not undertake a review of the territory plan unless—

(i) the authority decides a review is necessary; or

(ii) the Minister directs the authority to review the plan (see s 14 (1) (b)); and

(b) a decision under this section not to review the territory plan does not affect the authority's function of continually reviewing the territory plan.

103 Review of territory plan

(1) This section applies if the planning and land authority decides under section 102 that the territory plan should be reviewed.

(2) The planning and land authority must review the territory plan and, for that purpose, must prepare a strategic environmental assessment in relation to the review.

Note Requirements for strategic environmental assessments are dealt with in pt 5.6.

(3) After reviewing the territory plan, the planning and land authority must prepare a notice stating—

(a) that the authority has reviewed the plan; and

(b) the authority's findings on the review.

(4) The planning and land authority must give the notice under subsection (3) to the Minister.

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(5) A notice under subsection (3) is a notifiable instrument.

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

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Part 5.8 Territory plan—miscellaneous

104 Limitations on challenge to validity of territory plan provisions

(1) The validity of a provision of the territory plan must not be questioned in any legal proceeding other than a proceeding begun not later than 3 months after the day the provision, or a variation of the provision, commenced.

(2) The validity of a provision of the territory plan must not be questioned in any legal proceeding only because—

(a) the territory plan variation that inserted or varied the provision was inconsistent with the planning strategy; or

(b) a draft plan variation that became the territory plan variation that inserted or varied the provision was inconsistent with the planning strategy; or

(c) the provision, or part of it, is or was inconsistent with the planning strategy.

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Chapter 6 Planning strategy

105 Planning strategy

The Executive must make a planning strategy for the ACT that sets out long term planning policy and goals to promote the orderly and sustainable development of the ACT, consistent with the social, environmental and economic aspirations of the people of the ACT.

106 Public availability of planning strategy

The planning strategy is a notifiable instrument.

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

107 Main object of planning strategy

The main object of the planning strategy is to promote the orderly and sustainable development of the ACT, consistent with the social, environmental and economic aspirations of the people of the ACT in accordance with sound financial principles.

108 Relationship with territory plan

(1) The planning strategy may be used to develop the statement of strategic directions in the territory plan.

(2) The planning strategy is not part of, and does not affect, the territory plan.

109 Consideration of planning strategy

(1) The planning strategy must be considered by—

(a) the planning and land authority under section 61 and section 102 (2) (e); and

(b) the Minister under section 76; and

(c) the Executive under section 110.

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(2) The planning strategy is not a relevant consideration by the planning and land authority, the Minister or another entity, except as provided by subsection (1).

(3) Without limiting subsection (2), the planning strategy is not a relevant consideration for a decision under the following provisions:

(a) chapter 7 (Development approvals);

(b) chapter 8 (Environmental impact statements and inquiries);

(c) chapter 9 (Leases and licences);

(d) chapter 10 (Management of public land);

(e) chapter 11 (Controlled activities).

(4) The planning strategy must not be considered by—

(a) the planning and land authority, the Minister or any other entity, in the exercise of a function under this Act, except as provided under subsection (1); or

(b) a court in a proceeding on a decision made by the Minister, the authority or any other entity.

(5) In this section:

court includes a tribunal, authority or person with power to require the production of documents or the answering of questions.

110 Consideration of whether review of planning strategy necessary

(1) The Executive must, at least once every 5 years, consider whether the planning strategy should be reviewed.

(2) In deciding whether the planning strategy should be reviewed, the Executive must consider whether the planning strategy is consistent with its main object.

Note For the main object of the planning strategy, see s 107.

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(3) After the Executive considers whether the planning strategy should be reviewed, the Executive must prepare a notice stating—

(a) that the Executive has considered whether the planning strategy should be reviewed; and

(b) the Executive's decision on whether the planning strategy should be reviewed; and

(c) the date of the Executive's decision.

(4) A notice under subsection (3) is a notifiable instrument.

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

(5) To remove any doubt, the Executive is not required to undertake a review of the planning strategy.

111 If review of planning strategy necessary

If the Executive decides under section 110 that the planning strategy should be reviewed, the Executive must arrange for the planning strategy to be reviewed.

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Chapter 7 Development approvals

Notes to ch 7

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

Part 7.1 Outline

112 Outline—ch 7

(1) This chapter describes the assessment tracks that are to be followed for assessment of different kinds of development proposals.

(2) The assessment tracks are as follows:

(a) ***code track*** (for development proposals that can be assessed using rules in the code that applies to the proposals);

Examples of possible code track proposals

1 large pergola
2 below ground swimming pool
3 dual occupancy proposal
4 house extension

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).

(b) ***merit track*** (for development proposals that can be assessed using the rules and criteria in the code that applies to the proposals);

Examples of possible merit track proposals

1 childcare centre in residential area

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2 gymnasium in commercial area

3 apartment in commercial area

(c) ***impact track*** (for development proposals that can be assessed using the rules and criteria in the code that applies to the proposals, relevant environmental impact statements and the statement of strategic directions).

Examples of possible impact track proposals

1 constructing a major dam

2 constructing a major road, light rail line or other linear transport corridor

3 clearing a significant area of native vegetation

(3) This chapter also sets out—

(a) when a development (an ***exempt development***) may be undertaken without development approval; and

(b) when a development (a ***prohibited development***) must not be undertaken.

Examples of possible exempt developments

1 single residence in new housing area

2 small shed

Examples of possible prohibited developments

1 a paint factory in a residential area

2 commercial office accommodation in a suburban area

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Part 7.2 Assessment tracks for development applications

Division 7.2.1 Operation of assessment tracks generally

113 Relationship between development proposals and development applications

(1) A person who has a development proposal may apply to the planning and land authority for approval to undertake the development proposed.

(2) The determination of which assessment track applies to a development proposal is made by reference to circumstances when the application is made.

(3) Subsection (2) does not apply if, after the application is made—

(a) the Minister makes a declaration under section 124 (Minister may declare impact track applicable) in relation to the development proposal; or

(b) the Public Health Act Minister makes a declaration for section 125 (Declaration by Public Health Act Minister affects assessment track) in relation to the application.

(4) If an assessment track applies to a development proposal, the proposal is in that assessment track and that track must be followed in assessing the development application for the proposal.

(5) Subsection (4) is subject to section 123 (Impact track applicability).

114 Application of assessment tracks to development proposals

(1) The development table sets out the criteria to allow the assessment track for a development application for a development proposal to be worked out.

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(2) To remove any doubt—

(a) the planning and land authority may refuse to accept a development application made in an assessment track other than the assessment track for the development proposal; and

(b) if the authority assesses a development application made in an assessment track other than the track for the proposal, the authority must refuse the application.

115 Application of inconsistent code requirements

(1) This section applies in relation to an application for development approval for a development proposal if—

(a) 2 or more codes apply to the proposal; and

(b) the requirements under each code (the ***code requirements***) that apply to the proposal are inconsistent.

(2) If the code requirements of a precinct code and either a development code or a general code are inconsistent, the code requirements of the precinct code apply to the development proposal and not the code requirements of the development code or general code, to the extent of the inconsistency.

(3) If the code requirements of a development code and a general code are inconsistent, the code requirements of the development code apply to the development proposal and not the code requirements of the general code, to the extent of the inconsistency.

(4) If the code requirements of 2 or more precinct codes, development codes or general codes are inconsistent, the code requirements of the more recent code apply to the development approval and not the code requirements of the earlier code, to the extent of the inconsistency.

(5) To remove any doubt, a code requirement is not inconsistent with the code requirements of another code only because one code deals with a matter and the other does not.

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Division 7.2.2 Code track

116 Code track—when development approval must be given

Development approval must be given for a development proposal on application if—

(a) the proposal is in the code track; and

(b) the proposal complies with the relevant rules.

Note 1 ***Relevant rules***—see the dictionary.

Note 2 ***Rules***—see the dictionary.

Note 3 If a development application is made in the code track, but the development proposal is in another track, the application must be refused (see s 114 (2)).

116A Code track—effect of s 134 on development approval

(1) This section applies if—

(a) an authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and

(b) there is a development proposal in relation to the land; and

(c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3); and

(d) if a development application were made for both the development proposal and a use mentioned in subsection (2) (b), the application would be assessed in the code track.

(2) The person proposing the development proposal must apply for development approval for—

(a) the development proposal; and

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(b) any use (the ***proposed use***) of the land, or a building or structure on the land, that—

(i) is an authorised use of land, or a building or structure on the land that is exempt under section 134 (1); and

(ii) is intended to continue to apply to the land after the development proposal is carried out.

(3) In deciding the development application in the code track, the decision-maker—

(a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use the application would be refused; and

(b) must not approve the application on a condition only because, if the application were an application only for the proposed use the application would be approved on the condition.

Example

Bernice is the lessee of land for which the authorised use is residential and on which there is a house. The authorised use is exempt under s 134 (1). Bernice wants to build a double garage on the land which will require development approval. If the double garage was built, the authorised use of the land would stop being exempt under s 134 (3). In addition to applying for development approval to build and use the double garage, Bernice must also apply for development approval to use the land and house for residential purposes.

The decision-maker cannot refuse to approve the application, or approve it on a condition, only on the ground that, if the application were only for the use of the land for residential purposes, or use of the house, the decision-maker would refuse the application or approve it on conditions.

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).

117 Code track—notification, right of review, governmental consultation and reconsideration

To remove any doubt—

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(a) there is no requirement to publicly notify a development proposal in the code track; and

(b) there is only a right of review under chapter 13 for a decision in relation to a development proposal in the code track by the applicant if the development application for the proposal is approved subject to a condition; and

(c) there is no referral under division 7.3.3 (Referral of development applications) of a development application for a development proposal in the code track; and

(d) a decision to refuse a development application for a development proposal in the code track may not be reconsidered under division 7.3.10.

118 Code track—time for decision on application

A development application for a development proposal in the code track must be decided under section 162 (Deciding development applications) not later than 20 working days after the day the application is made to the planning and land authority.

Division 7.2.3 Merit track

119 Merit track—when development approval must not be given

(1) Development approval must not be given for a development proposal in the merit track unless the proposal is consistent with—

(a) the relevant code; and

(b) if the proposed development relates to land comprised in a rural lease—any land management agreement for the land; and

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(c) if the proposed development will affect a registered tree or declared site—the advice of the conservator of flora and fauna in relation to the proposal.

Note 1 An application cannot be approved if it is inconsistent with the territory plan (see s 50) or the National Capital Plan (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 11).

Note 2 ***Relevant code***—see the dictionary.

(2) Also, development approval must not be given for a development proposal in the merit track if approval would be inconsistent with any advice given by an entity to which the application was referred under division 7.3.3 unless the person deciding the application is satisfied that—

(a) the following have been considered:

(i) any applicable guidelines;

(ii) any realistic alternative to the proposed development, or relevant aspects of it; and

(b) the decision is consistent with the objects of the territory plan.

(3) To remove any doubt, if a proposed development will affect a registered tree or declared site—

(a) the person deciding the development application for the proposed development must not approve the application unless the approval is consistent with the advice of the conservator of flora and fauna in relation to the proposal; and

(b) subsection (2) does not apply in relation to the conservator's advice.

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120 Merit track—considerations when deciding development approval

In deciding a development application for a development proposal in the merit track, the decision-maker must consider the following:

(a) the objectives for the zone in which the development is proposed to take place;

(b) the suitability of the land where the development is proposed to take place for a development of the kind proposed;

(c) each representation received by the authority in relation to the application that has not been withdrawn;

(d) if an entity gave advice on the application in accordance with section 149 (Requirement to give advice in relation to development applications)—the entity's advice;

Note Advice on an application is given in accordance with section 149 if the advice is given by an entity not later than 15 working days (or shorter prescribed period) after the day the application is given to the entity. If the entity gives no response, the entity is taken to have given advice that supported the application (see s 150).

(e) if the proposed development relates to land that is public land—the plan of management for the land;

(f) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts.

120A Merit track—effect of s 134 on development approval

(1) This section applies if—

(a) an authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and

(b) there is a development proposal in relation to the land; and

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(c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3); and

(d) if a development application were made for both the development proposal and a use mentioned in subsection (2) (b), the application would be considered in the merit track.

(2) The person proposing the development proposal must apply for development approval for—

(a) the development proposal; and

(b) any use (the ***proposed use***) of the land, or a building or structure on the land, that—

(i) is an authorised use of land, or a building or structure on the land that is exempt under section 134 (1); and

(ii) is intended to continue to apply to the land after the development proposal is carried out.

(3) In deciding the development application in the merit track, the decision-maker—

(a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use the application would be refused; and

(b) must not approve the application on a condition only because, if the application were an application only for the proposed use the application would be approved on the condition.

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Example

Donald is the lessee of land for which the authorised uses are residential, retail and commercial, and on which there is a building that is mixed residential and retail, and another building that is used for commercial. Donald wants to demolish the commercial building, which will require a development approval. Donald does not want to use the land for commercial purposes any more. If the commercial building was demolished, the authorised uses of the land would stop being exempt under s 134 (3). In addition to applying for development approval to demolish the commercial building, Donald must also apply for development approval to use the land for residential and retail purposes, but need not apply for approval for use for commercial purposes.

The decision-maker cannot refuse to approve the application, or approve it on a condition, only on the ground that, if the application were only for the use of the land and for residential purposes or retail purposes, or use of the mixed residential and retail building, the decision-maker would refuse the application or approve it on conditions.

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).

121 Merit track—notification and right of review

(1) To remove any doubt, if a development proposal is in the merit track, the application for development approval for the proposal must be publicly notified under division 7.3.4.

(2) If there is a right of review under chapter 13 in relation to a decision to approve an application for development approval for a development proposal in the merit track, the right of review is only in relation to the decision, or part of the decision, to the extent that—

(a) the development proposal is subject to a rule and does not comply with the rule; or

(b) no rule applies to the development proposal.

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122 Merit track—time for decision on application

A development application for a development proposal in the merit track must be decided under section 162 (Deciding development applications) not later than—

(a) if no representation is made in relation to the proposal—30 working days after the day the application is made to the planning and land authority; or

(b) in any other case—45 working days after the day the application is made to the authority.

Division 7.2.4 Impact track

123 Impact track applicability

The impact track applies to a development proposal if—

(a) the relevant development table states that the impact track applies; or

(b) the proposal is of a kind mentioned in schedule 4; or

Note For certain proposals mentioned in sch 4, a proponent may apply under s 138A (2) for an environmental significance opinion from a relevant agency that the proposal is not likely to have a significant adverse environmental impact. The production of the opinion by the agency will take the proposal out of the impact track unless other reasons under this section apply.

(c) the Minister makes a declaration under section 124 in relation to the proposal; or

(d) section 125 (Declaration by Public Health Act Minister affects assessment track) or section 132 (Impact track applicable to development proposals not otherwise provided for) provides that the impact track applies to the proposal; or

(e) the Commonwealth Minister responsible for administering the *Environment Protection and Biodiversity Conservation*

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Act 1999 (Cwlth) advises the Minister in writing that the development proposed—

(i) is a controlled action under that Act, section 76; and

(ii) does not require assessment under that Act, part 8 (Assessing impacts of controlled actions) because a bilateral agreement between the Commonwealth and the Territory under that Act allows the proposal to be assessed under this Act.

124 Minister may declare impact track applicable

(1) The Minister may, in writing, declare that the impact track applies to a development proposal.

(2) However, the Minister must not make a declaration under subsection (1) in relation to a development proposal unless satisfied on reasonable grounds that there is a risk of significant adverse environmental impact from the development proposed.

Note The Minister may publish guidelines about how the Minister will exercise power under this section (see s 420).

124A Meaning of *significant* adverse environmental impact

(1) For this Act, an adverse environmental impact is ***significant*** if—

(a) the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant; or

(b) the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system, value or entity.

(2) In deciding whether an adverse environmental impact is ***significant***, the following matters must be taken into account:

(a) the kind, size, frequency, intensity, scope and length of time of the impact;

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(b) the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.

(3) In deciding whether a development proposal is likely to have a significant adverse environmental impact it does not matter whether the adverse environmental impact is likely to occur on the site of the development or elsewhere.

125 Declaration by Public Health Act Minister affects assessment track

(1) This section applies if—

(a) the Public Health Act Minister makes a declaration for this section in relation to a development application for a development proposal; and

Note The Public Health Act Minister is the Minister responsible for the *Public Health Act 1997*, section 134 (see dict, def ***Public Health Act Minister***).

(b) the application is publicly notified; and

(c) the declaration is made during the public notification period for the application.

Note A development application in the code track will never be publicly notified.

(2) The impact track applies to the development proposal.

126 Declaration etc of impact track after application

(1) This section applies to a development application if, after the application is made—

(a) either—

(i) the Minister makes a declaration under section 124 in relation to the development proposal to which the application relates; or

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(ii) the Public Health Act Minister makes a declaration for section 125 in relation to the application; and

(b) the application does not satisfy the requirements for an application in the impact track.

(2) The development application is, by force of this section, taken to have been withdrawn.

(3) The planning and land authority must give the applicant notice of the effect of this section.

127 Impact track—development applications

A development application for a development proposal in the impact track must include a completed EIS in relation to the proposal unless the application is exempted by the Minister under section 211.

Note 1 Requirements for development applications are dealt with in div 7.3.2.

Note 2 Requirements for an EIS are dealt with in pt 8.2.

Note 3 For when an EIS is completed, see s 209.

128 Impact track—when development approval must not be given

(1) Development approval must not be given for a development application for a development proposal in the impact track unless—

(a) either—

(i) an EIS for the proposal has been completed; or

(ii) the Minister has exempted the application under section 211; and

(b) the proposal is consistent with—

(i) the statement of strategic directions; and

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(ii) if the proposed development relates to land comprised in a rural lease—any land management agreement for the land; and

(iii) if the proposed development will affect a registered tree or declared site—the advice of the conservator of flora and fauna in relation to the application.

Note 1 An application cannot be approved if it is inconsistent with the territory plan (see s 50) or the National Capital Plan (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 11).

Note 2 Requirements for an EIS are dealt with in pt 8.2.

Note 3 For when an EIS is completed, see s 209.

Note 4 For the term of a scoping document for an EIS, see s 215.

(2) Also, development approval must not be given for a development proposal in the impact track if approval would be inconsistent with any advice given by an entity to which the application was referred under division 7.3.3 unless the person approving the application is satisfied that—

(a) the following have been considered:

(i) any applicable guidelines;

(ii) all reasonable development options and design solutions;

(iii) any realistic alternative to the proposed development, or relevant aspects of it; and

(b) the decision is consistent with the objects of the territory plan.

(3) To remove any doubt, if a proposed development will affect a registered tree or declared site—

(a) the person deciding the development application for the proposed development must not approve the application unless the approval is consistent with the advice of the conservator of flora and fauna in relation to the proposal; and

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(b) subsection (2) does not apply in relation to the conservator's advice.

129 Impact track—considerations when deciding development approval

In deciding a development application for a development proposal in the impact track, the decision-maker must consider the following:

(a) the objectives for the zone in which the development is proposed to take place;

(b) the relevant code;

(c) the suitability of the land where the development is proposed to take place for a development of the kind proposed;

(d) each representation received by the authority in relation to the application that has not been withdrawn;

(e) if an entity gave advice on the application in accordance with section 149 (Requirement to give advice in relation to development applications)—the entity's advice;

Note Advice on an application is given in accordance with section 149 if the advice is given by an entity not later than 15 working days (or shorter prescribed period) after the day the application is given to the entity. If the entity gives no response, the entity is taken to have given advice that supported the application (see s 150).

(f) if the proposed development relates to land that is public land—the plan of management for the land;

(g) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts;

(h) any completed EIS for the proposed development;

Note For when an EIS is completed, see s 209.

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(i) the conclusions of any inquiry about an EIS for the proposed development under chapter 8 (Environmental impact statements and inquiries).

129A Impact track—effect of section 134 on development approval

(1) This section applies if—

(a) an authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and

(b) there is a development proposal in relation to the land; and

(c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3); and

(d) if a development application were made for both the development proposal and a use mentioned in subsection (2) (b), the application would be assessed in the impact track.

(2) The person proposing the development proposal must apply for development approval for—

(a) the development proposal; and

(b) any use (the ***proposed use***) of the land, or a building or structure on the land, that—

(i) is an authorised use of land, or a building or structure on the land that is exempt under section 134 (1); and

(ii) is intended to continue to apply to the land after the development proposal is carried out.

(3) In deciding the development application in the impact track, the decision-maker—

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(a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use the application would be refused; and

(b) must not approve the application on a condition only because, if the application were an application only for the proposed use the application would be approved on the condition.

Example

Barbara is the lessee of land for which the authorised uses are retail and commercial and on which there are office buildings and shops. Barbara wants to undertake earthworks to clear an area of vegetation for people to park on the land, which will require a development approval. If the earthworks were carried out, the authorised uses of the land would stop being exempt under s 134 (2). In addition to applying for development approval to undertake the earthworks, Barbara must also apply for development approval to use the land for retail and commercial purposes.

The decision-maker cannot refuse to approve the application, or approve it on a condition, only on the ground that, if the application were only for the use of the land for retail purposes or commercial purposes, or use of the office buildings and shops, the decision-maker would refuse the application or approve it on conditions.

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).

130 Impact track—notification and right of review

If a development proposal is in the impact track, the application for development approval for the proposal must be publicly notified under division 7.3.4 and there may be a right of review under chapter 13 by someone other than the applicant in relation to the decision on the application.

131 Impact track—time for decision on application

A development application in relation to a development proposal in the impact track must be decided under section 162 (Deciding development applications) not later than—

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(a) if no representation is made in relation to the proposal—30 working days after the day the application is made to the planning and land authority; or

(b) in any other case—45 working days after the day the application is made to the authority.

Division 7.2.5 Development proposals not in development table and not exempted

131A Development proposal for lease variation in designated area

(1) This section applies to a development proposal that is a variation of a lease in a designated area.

(2) Section 50 (Effect of territory plan), section 65 (Effect of draft plan variations publicly notified) and the territory plan do not apply in relation to the development proposal.

(3) The development proposal must be dealt with under the provisions of this Act (other than any territory plan-related provisions) that apply in relation to the merit track.

(4) However, if the impact track applies to the development proposal under section 123 (b), (c), (d) or (e), the proposal must be dealt with under the provisions of this Act (other than any territory plan-related provisions) that apply in relation to the impact track.

(5) In this section:

territory plan-related provision means a provision of this Act that applies a development table, code, rules or criteria, objectives for a zone, statement of strategic directions, or anything else in the territory plan.

Examples—territory plan-related provisions

1 s 119 (2) (b)

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2 s 139 (2) (e) and (f)

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).

131B Development proposal for lease variation other than in designated area

(1) This section applies to a development proposal that is a variation of a lease other than a lease in a designated area.

(2) The development proposal must be dealt with under the provisions of this Act that apply to the merit track unless—

(a) the territory plan requires the proposal to be dealt with under another track; or

(b) the impact track applies to the proposal under section 123 (Impact track applicability).

(3) However, if the development proposal is a variation to a lease to add an additional authorised use under the lease, the proposal must be dealt with under the provisions of this Act that apply to the track that applies to the proposed additional authorised use under the territory plan.

132 Impact track applicable to development proposals not otherwise provided for

(1) In this section:

development proposal means a development proposal if—

(a) the relevant development table for the proposal does not state—

(i) which assessment track applies to the proposal; or

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(ii) that the proposal is exempt from requiring development approval or is prohibited; and

(b) the proposal is not exempt from requiring development approval under the relevant development table or by regulation.

(2) The impact track applies to the development proposal.

Division 7.2.6 Exempt development

133 What is an *exempt development*?

In this Act:

exempt development—

(a) means development that is exempt from requiring development approval under—

(i) the relevant development table; or

Note 1 Development tables are dealt with in s 54.

Note 2 ***Relevant development table***—see the dictionary.

(ii) section 134; or

(iii) a regulation; but

(b) for paragraph (a) (i) and (iii)—does not include development on land if—

(i) the development is inconsistent with a provision of a development approval for other development on the land; and

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(ii) the development approval is given on the condition that the provision is complied with.

Example—condition that provision complied with

Development plans do not include windows in the front wall. The approval is expressed to be subject to the condition that the front wall not have windows.

Example—not a condition that provision complied with

Development plans do not include windows in the front wall. The approval is given without explicit mention of windows in the front wall being a condition of the approval.

Note 1 An approval may be given subject to conditions, see s 165.

Note 2 The planning and land authority must tell a proponent of a development proposal if the development is likely to be exempt (see s 138 (4) (a)). A person may apply for an exemption assessment to work out whether a development is an exempt development (see s 138B).

Note 3 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).

134 Exempt development—authorised use

(1) An authorised use of land, or a building or structure on the land, is exempt from requiring development approval.

(2) However, use of the land is not exempt from requiring development approval if—

(a) earthworks or other construction work is carried out on the land; and

(b) the work requires development approval.

(3) Also, use of the land, or a building or structure on the land, is not exempt from requiring development approval if—

(a) a building or structure on the land is constructed, altered or demolished; and

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(b) the construction, alteration or demolition requires development approval.

(4) To remove any doubt, if an authorised use of land, a building or structure is exempt from requiring development approval under subsection (1), the right to use the land, building or structure as authorised does not end only because 1 or more of the following apply in relation to the use:

(a) the use is not continuous;

(b) someone deals with the lease (the ***affected lease***) that authorises the use;

(c) a further lease is granted for the affected lease on application under section 254, whether or not the grant happens immediately after the expiry of the affected lease.

(5) However, the authorised use of the land, building or structure stops being exempt from requiring development approval if the use was authorised by a lease (the ***affected lease***) and—

(a) the affected lease expires and no application is made under section 254 for a further lease; or

Note A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease (see s 254).

(b) the affected lease is—

(i) surrendered, other than for a lease variation or renewal; or

(ii) terminated.

(6) Also, the authorised use of the land, building or structure stops being exempt from requiring development approval if—

(a) the use was authorised by a licence under this Act or a permit under the *Roads and Public Places Act 1937*; and

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(b) the licence or permit—

(i) has expired and has not been renewed on an application to renew the licence or permit made within 6 months after the day of expiry; or

(ii) ends other than by expiring.

(7) To remove any doubt, an authorised use of a building or structure is exempt from requiring development approval if the construction of the building or structure is exempt from requiring development approval.

(8) In this section:

authorised use, of land, or a building or structure on the land—

(a) means a use authorised by any of the following (whether expressly or by implication):

(i) a lease;

(ii) a licence under this Act;

(iii) a permit under the *Roads and Public Places Act 1937*;

(iv) a provision of chapter 15 (Transitional); and

(b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry; and

(c) does not include a use authorised by section 247.

Note As the use of land, or a building or structure on the land, is development (see s 7), if the use of the land, or a building or structure on the land, stops being exempt under this section, development approval will be required for the use. Once development approval has been given for the use, it continues indefinitely unless it ends under s 186 (see also s 188). A further development approval will not be required for use of the land, or a building or structure on the land, unless the existing development approval does not cover a proposed new use of the land, or a building or structure on the land.

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135 Exempt development—no need for application or approval

(1) An exempt development may be undertaken without a development application and development approval.

(2) A person cannot apply for approval of a development proposal for an exempt development.

Note The development proposal may still need a building approval under the *Building Act 2004*.

Division 7.2.7 Prohibited development

136 Development proposals for prohibited development

(1) If a development is prohibited, either under the relevant development table or under subsection (2), a person cannot apply for approval of a development proposal for the development.

Note 1 A development is prohibited if any part of the development is prohibited (see dict, def ***prohibited***).

Note 2 It is an offence to undertake prohibited development (see s 200).

Note 3 However, if development is authorised by a development approval and subsequently becomes prohibited, the development can continue (see s 201).

Note 4 Also, development that is lawful when it begins continues to be lawful (see s 203 and s 204).

(2) A development by an entity other than the Territory or a territory authority in a future urban area is prohibited unless the structure plan for the area states otherwise.

137 Applications for development approval in relation to use for otherwise prohibited development

(1) This section applies to a development proposal in relation to a use of land, or a building or structure on the land, if—

(a) the use is an authorised use; but

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(b) beginning the use is a prohibited development.

(2) Despite section 136—

(a) a person may apply to the planning and land authority for development approval for the development proposal; and

(b) the proposal is taken not to be for a prohibited development; and

(c) the impact track applies to the proposal.

(3) In this section:

authorised use, of land, or a building or structure on the land, means—

(a) a use authorised by—

(i) a lease; or

(ii) section 247; or

(iii) a provision of chapter 15 (Transitional); and

(b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

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Part 7.3 Development applications

Division 7.3.1 Pre-application matters

138 Consideration of development proposals

(1) The planning and land authority must consider a development proposal if asked by the proponent of the proposal.

(2) However, the planning and land authority need not consider the development proposal if satisfied that the information provided by the proponent in relation to the proposal would not allow the authority to provide adequate advice in relation to the matters mentioned in subsection (4).

(3) The planning and land authority must tell the proponent if, because the authority is satisfied under subsection (2), the authority does not consider the development proposal.

(4) The planning and land authority must, after considering the development proposal, tell the person, in writing, the following in relation to the proposal:

(a) which assessment track is likely to apply to the proposal, or if the proposal is likely to be exempt or prohibited;

Note A person may apply for an exemption assessment to work out whether a development is an exempt development (see s 138B).

(b) whether the application will be referred under division 7.3.3 (Referral of development applications);

(c) whether public notification under division 7.3.4 will be required for the application;

(d) whether the development proposed is consistent with existing lease conditions applying to the land where the development is proposed to take place;

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(e) if the development proposal relates to a variation of a nominal rent lease—

(i) whether a lease variation charge is payable under division 9.6.3 (Variation of nominal rent leases) in relation to the variation; and

(ii) if asked by the proponent—what the charge is likely to be and how the authority has worked out the charge;

(f) generally, what further information may be required.

(5) The planning and land authority's advice on a proposed development application after consideration is intended to guide and assist the applicant in making the development application.

(6) However, the planning and land authority may act inconsistently with advice under this section in relation to a development proposal if—

(a) the environmental circumstances surrounding the development proposal change; or

(b) the development proposal for which development approval is sought is different from the proposal in relation to which the advice was given; or

(c) for subsection (4) (e)—the development proposal that is approved is different from the proposal in relation to which the advice was given; or

(d) when the proponent asked for advice, the request did not include relevant information; or

(e) the territory plan changes after the advice is given and before the authority acts; or

(f) the advice given was inconsistent with the territory plan because of an error.

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(7) Advice given under this section expires 6 months after the day it is given.

138AA Impact track proposals if not likely to have significant adverse environmental impact

(1) This section applies to a development proposal mentioned in—

(a) schedule 4, part 4.2, item 3 (c) or (d); or

(b) schedule 4, part 4.3, item 1, item 2 (a) or (b), item 3 or item 6.

(2) If the proponent of a development proposal wants the application for the development approval assessed in the merit track on the ground that the proposal is not likely to have a significant adverse environmental impact, the proponent must apply to the relevant agency for an opinion (an ***environmental significance opinion***) to that effect.

Note 1 A development proposal may still be in the impact track for other reasons under s 123 (eg because of a declaration under s 125 (Declaration by Public Health Act Minister affects assessment track)).

Note 2 If a form is approved under s 425 for this provision, the form must be used.

138AB Deciding environmental significance opinion applications

(1) A relevant agency may, by written notice, require an applicant for an environmental significance opinion to provide additional information in support of the application.

(2) Notice under subsection (1) must state the time, not shorter than 20 working days, within which the applicant must respond to the notice.

(3) The relevant agency may refuse to decide the application if the additional information requested under subsection (1) is not given to the agency within the stated time.

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(4) If the relevant agency decides the application, the agency must—

(a) give the environmental significance opinion if it considers that the proposal is not likely to have a significant adverse environmental impact; or

(b) reject the application.

(5) The relevant agency must notify the applicant and the planning and land authority in writing if it rejects the application.

(6) A relevant agency is taken to have rejected an application for an environmental significance opinion if the agency does not give the opinion or a notice under subsection (5) within—

(a) if no additional information is requested under subsection (1)—30 working days after the application is made to the agency; or

(b) if additional information is requested and the information is given to the agency—30 working days after the information is given to the agency; or

(c) if additional information is requested and the information is not given to the agency within the time stated—30 working days after the stated time has ended.

(7) However, the relevant agency may decide the application despite the rejection of the application under subsection (6).

138AC Costs of environmental significance opinion

(1) A relevant agency may recover from an applicant for an environmental significance opinion the direct and indirect costs incurred by the agency—

(a) in deciding an application for the opinion; and

(b) in preparing the opinion; and

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(c) in engaging a consultant to assist with deciding the application or preparing the opinion.

Note The costs may be recovered in a court of competent jurisdiction (see Legislation Act, s 177).

(2) If the relevant agency has sent an invoice to the applicant for the costs recoverable under subsection (1), the agency must give a copy of the invoice to the planning and land authority.

(3) Despite section 138AB (4) and (5), the relevant agency may wait until the invoice has been paid by the applicant before giving the environmental significance opinion or giving a notice under section 138AB (5).

138AD Requirements in relation to environmental significance opinions

(1) This section applies to an environmental significance opinion given by a relevant agency to the applicant for the opinion.

(2) The relevant agency must give a copy of the environmental significance opinion to the planning and land authority when the opinion is given to the applicant.

(3) The planning and land authority must prepare a notice including the text of the environmental significance opinion.

(4) A notice is a notifiable instrument.

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

(5) The planning and land authority must put an electronic link to the notice on the authority website.

(6) An environmental significance opinion and the notice including the text of the opinion expire 18 months after the day the notice is notified.

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(7) Giving an environmental significance opinion does not limit any power the relevant agency has under this Act or any other territory law.

Division 7.3.1A Exemption assessments

138A Purpose of exemption assessment D notices

(1) An exemption assessment may relate to development that is to be undertaken or has been undertaken.

(2) An exemption assessment D notice in relation to a development that is to be undertaken certifies that the development is, or is not, an exempt development.

(3) An exemption assessment D notice in relation to a development that has been undertaken certifies that the development is, or is not, exempt from requiring development approval based on whether the development was exempt from requiring development approval at the time it was done, or is currently exempt from requiring development approval.

138B Exemption assessment applications

(1) A person may apply, in writing, to a works assessor or building surveyor for an assessment (an ***exemption assessment***) of whether a development is an exempt development under section 133.

Note 1 ***Building surveyor***—see the *Constructions Occupations (Licensing) Act 2004*, s 9. ***Works assessor***—see the *Constructions Occupations (Licensing) Act 2004*, s 14A.

Note 2 Applying for an exemption assessment is not a requirement of the development approval or building approval process (see s 138C and the *Building Act 2004*, s 14A). If a person believes that a development is an exempt development, the person need not apply for an exemption assessment from a works assessor or building surveyor.

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(2) The application must—

(a) include—

(i) the plans relating to the development prescribed by regulation; and

(ii) the number of copies of the plans prescribed by regulation; and

(iii) any other details or material prescribed by regulation; and

(b) be in writing signed by the applicant; and

(c) if the applicant is someone other than the lessee of the land to which the application relates—also be signed by—

(i) if the land to which the application relates is subject to a lease—the lessee of the land; or

(ii) if the land to which the application relates is public land or unleased land—the custodian for the land; or

(iii) in any other case—the planning and land authority.

Note If a form is approved under s 425 for an application, the form must be used.

(3) A regulation may prescribe information required to be shown in plans under subsection (2) (a) (i).

138C Exemption assessment not required for development approval

(1) An exemption assessment is not a requirement of the development approval process.

(2) A works assessor or building surveyor may issue an exemption assessment D notice to a person only if the person has applied to the works assessor or building surveyor for an exemption assessment.

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138D Exemption assessments and notices

(1) This section applies if a person applies to a works assessor or building surveyor for an exemption assessment under section 138B and the works assessor or building surveyor agrees to provide the exemption assessment.

(2) The works assessor or building surveyor must—

(a) prepare the exemption assessment; and

(b) issue a notice (an ***exemption assessment D notice***) stating—

(i) whether the development is an exempt development under section 133; and

(ii) anything else prescribed by regulation; and

(c) give the exemption assessment D notice to the applicant; and

(d) within 5 days after the day the works assessor or building surveyor issues the notice—give a copy of the notice to the planning and land authority.

Note 1 The works assessor or building surveyor may refuse to issue a notice if the works assessor or building surveyor does not have enough information (see s 138G).

Note 2 Other people may rely on an exemption assessment D notice, for example, a building surveyor when issuing a building approval under the *Building Act 2004*.

(3) If the development that is the subject of the application has been undertaken and the works assessor or building surveyor certifies that the development is exempt because the development was exempt when undertaken, the exemption assessment D notice must also include the dates on which the works assessor or building surveyor has based the assessment that the development was exempt.

(4) If, after taking reasonable steps, an applicant cannot find a works assessor or building surveyor who will agree to provide an exemption assessment, the applicant may apply to the construction

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occupations registrar to appoint a works assessor to prepare the exemption assessment and issue an exemption assessment D notice.

Note If the proponent of a development proposal lodges the proposal with the planning and land authority, the authority must tell the proponent if the development is likely to be exempt (see s 138 (4) (a)).

138E Exemption assessment applications—request for further information

(1) This section applies if—

(a) a works assessor or building surveyor requires further information for an exemption assessment under section 138D; and

(b) the applicant and the works assessor or building surveyor have not agreed that the works assessor or building surveyor will obtain the further information; and

(c) the works assessor or building surveyor believes on reasonable grounds that the further information will help the works assessor or building surveyor to prepare the assessment.

(2) The works assessor or building surveyor may, by written notice, ask the applicant to give the works assessor or building surveyor stated further information in relation to the application.

(3) This section does not entitle a works assessor or building surveyor to require—

(a) photographs to be taken by someone other than the applicant; or

(b) photographs to be taken using equipment other than equipment of the applicant's choice; or

(c) further information if—

(i) the works assessor or building surveyor has, or has reasonable access to, suitable information that allows the

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works assessor or building surveyor to decide the application without personally inspecting the land where the development is to be carried out; or

(ii) a territory law requires the works assessor or building surveyor to personally obtain or be given the information.

Examples—suitable information works assessor or building surveyor has or has reasonable access to

1 The website www.actmapi.act.gov.au provides aerial photographs and topographical information including ground contours for some ACT areas. If the land to which an application relates is covered by the website, the photographs and contours have sufficient information, and are accurate and recent enough, to decide the application in relation to tree and ground-height related matters, the works assessor or building surveyor may not require further information or documents by way of photographs or topographical information in relation to trees and ground heights.

2 A works assessor or building surveyor may verify land tenure and permit and statutory approval matters by contacting the statutory custodians of the information to a sufficient degree to decide the application in relation to those matters. The works assessor or building surveyor may not require further information in relation to those matters.

3 The land to which an application relates is covered by www.actmapi.act.gov.au but, because the slope of the land to be built on is steeper than would be adequately shown on the website, the works assessor or building surveyor does not have suitable information to allow the works assessor or building surveyor to decide the application without personally inspecting the land. Another website has some topographical information on the land, but it is not of sufficient resolution, or recent enough, to be relied on by the works assessor or building surveyor in relation to ground heights to decide the application. The works assessor or building surveyor may require further information in relation to ground heights.

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) For this section, a works assessor or building surveyor that is a partnership inspects land personally if any partner inspects the land.

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138F Exemption assessment applications—contents of request for further information

(1) A request under section 138E must—

(a) state the period within which the further information asked for must be provided; and

(b) if the further information is not a document—state that the further information must be provided in writing; and

(c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the works assessor or building surveyor may under section 138G refuse to issue an exemption assessment D notice; and

(d) state that, despite the applicant and works assessor or building surveyor having previously not agreed that the works assessor or building surveyor would obtain the further information, the applicant and works assessor or building surveyor may agree that the works assessor or building surveyor will obtain the information.

(2) The request may require the applicant to verify all or part of any information provided by statutory declaration.

(3) The period stated under subsection (1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.

(4) The works assessor or building surveyor may, on application before the end of the period stated under subsection (1) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

138G Exemption assessment applications—effect of failure to provide further information

(1) This section applies if—

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(a) a works assessor or building surveyor has asked for further information under section 138E in relation to an exemption assessment application; and

(b) the applicant has not provided some or all of the information by—

(i) the end of the period stated in the request; or

(ii) if the works assessor or building surveyor has extended the period within which the further information must be provided—the end of that period; and

(c) the applicant and the works assessor or building surveyor have not agreed that the works assessor or building surveyor will obtain the further information.

(2) The works assessor or building surveyor may refuse to issue an exemption assessment D notice under section 138D.

Division 7.3.2 Requirements for development applications

139 Form of development applications

(1) This section applies to an application for development approval.

(2) The application must—

(a) be in writing signed by the applicant; and

(b) if the application is made by someone other than the lessee of the land to which the application relates—also be signed by—

(i) if the land to which the application relates is subject to a lease—the lessee of the land; or

(ii) if the land to which the application relates is public land or unleased land—the custodian for the land; or

(iii) in any other case—the planning and land authority; and

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(c) if the application is for approval of a development in the code track—be accompanied by information or documents addressing the relevant rules; and

(d) if the application is for approval of a development in the merit track—be accompanied by information or documents addressing the relevant rules and relevant criteria; and

(e) if the application is for approval of a development in the merit track and the territory plan requires an assessment (an ***assessment of environmental effects***) of the possible environmental effects of the development in detail that is sufficient taking into consideration the size and significance of the impact of the development on the environment—be accompanied by an assessment of environmental effects; and

(f) if the application is for approval of a development in the impact track—be accompanied by—

(i) information or documents addressing the relevant rules and relevant criteria; and

(ii) the completed EIS for the proposal, unless the application for the development approval for the proposal is exempted under section 211; and

(g) if the application is for approval of a s 277 chargeable variation of a nominal rent lease—be accompanied by a valuation by an accredited valuer that works out the amounts represented by V_1 and V_2 in section 277; and

(h) if the application is for approval of a development prescribed by regulation for this paragraph—an assessment prepared using criteria provided by 1 or more of the entities to which the application is required to be referred under division 7.3.3; and

(i) if the application is for approval of a development that requires construction work to be carried out on land that has previously been developed and is not leased for rural purposes—be

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accompanied by a survey certificate for the land where the development is to be carried out (unless otherwise prescribed by regulation); and

(j) if the application is for development to which section 205 (Development applications for developments undertaken without approval) applies—be accompanied by a plan of the development prepared by a registered surveyor that sets out the dimensions of the development; and

(k) if the application is for the subdivision of a units plan under the *Unit Titles Act 2001*, section 165B (Subdivision of units plan—application)—be accompanied by the resolution of the owners corporation under the *Unit Titles Act 2001*, section 160 (3) to cancel the units plan; and

(l) if division 9.4.2 (Varying concessional leases to remove concessional status) applies to the application—be accompanied by an assessment of—

(i) the social, cultural and economic impacts of the proposed variation; and

(ii) any other matter prescribed by regulation; and

Note Matters the Minister must consider before approving a variation are set out in s 261, and conditions to which the variation may be subject are set out in s 262.

(m) if the applicant wants the application for development approval assessed in the merit track on the ground of an environmental significance opinion that the development proposal is not likely to have a significant adverse environmental impact—be accompanied by—

(i) the environmental significance opinion for the proposal; and

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(ii) if the relevant agency has sent an invoice to the applicant for the costs recoverable under section 138AC (1)—proof of payment of the invoice.

Note 1 A development application in the impact track must usually include an EIS (see s 128).

Note 2 A development application for a development proposal to which division 7.2.5 applies must include an EIS (see s 120 and div 7.2.4).

Note 3 For when an EIS is completed, see s 209.

(3) A person who signs an application under subsection (2) (b) (i) is taken to be an applicant in relation to the application.

(4) A regulation may prescribe the requirements for an assessment mentioned in subsection (2) (l) (i).

(5) The Minister may make guidelines for the preparation of an assessment mentioned in subsection (2) (l) (i).

(6) A guideline is a notifiable instrument.

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

(7) In this section:

relevant criteria, for a development proposal, means the criteria that apply to the proposal in each relevant code.

s 277 chargeable variation—see section 276.

survey certificate, for land where development is to be carried out, means a certificate prepared by a registered surveyor that shows—

(a) the boundaries of the land; and

(b) the location of each building or structure on the land; and

(c) the existing contours of the land.

140 Effect of approvals in development applications

(1) This section applies if—

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(a) a code that applies to a development proposal requires an entity to approve the development or certify something in relation to the development; and

(b) the entity approves the development, or certifies something in relation to the development, in writing; and

(c) the development application is approved (by way of a development approval).

(2) The entity must not act inconsistently with the development approval unless—

(a) further information in relation to the development proposed in the application comes to the entity's attention (other than information mentioned in subsection (3)); and

(b) the entity did not have the further information when the entity approved the development or certified the thing; and

(c) the further information is relevant to the approval of, or certification in relation to, the development; and

(d) the entity would not have approved the development or certified the thing considered if the entity had the further information before deciding the application.

(3) Subsection (2) (a) does not apply to further information in relation to a development proposed in an application if—

(a) the information was not required in the development application; and

(b) the information is required by the entity after the application is approved; and

(c) the information is consistent in all significant respects with information already provided by the applicant, except that it is more detailed.

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(4) For this section, an entity ***acts inconsistently*** with a development approval if the entity—

(a) does not issue or give an approval or other thing required for the development; or

(b) issues or gives the approval or other thing in a way, or subject to a condition, that prevents the applicant undertaking the development approved.

Example of thing required for development

the entity's agreement to the digging up of a footpath to allow the development

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) Also for this section, an entity ***acts inconsistently*** with a development approval if—

(a) the approval, or a certificate in writing by the entity in relation to the development, states that an activity to which the approval relates does not require a particular authorisation (however described); and

(b) the entity prosecutes someone, or takes other compliance action, in relation to the activity because the activity is carried out without the particular authorisation.

141 Authority may require further information—development applications

(1) The planning and land authority may, by written notice, ask an applicant for development approval to give the authority stated further information in relation to a development application.

(2) The request must—

(a) state the period within which the further information asked for must be provided; and

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(b) state that the further information must be provided in writing.

Note A request for further information may affect the time for deciding a development application (see div 7.3.7).

(3) The period stated under subsection (2) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.

(4) The planning and land authority may, on application before the end of the period stated under subsection (2) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

Note The planning and land authority may extend the period within which further information must be provided after the end of the period being extended (see Legislation Act, s 151C (3)).

142 Effect of failure to provide further information—development applications

(1) This section applies if—

(a) the planning and land authority has asked for further information under section 141 in relation to an application; and

(b) the applicant has not provided some or all of the information in accordance with the request.

(2) The planning and land authority may refuse the application under section 162.

143 Correcting development applications

(1) The planning and land authority may, on the authority's own initiative or on application, correct a formal error in a development application.

(2) However, the planning and land authority must not make a correction if making the correction would adversely affect someone other than the applicant.

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(3) If the planning and land authority does not tell the applicant that the authority refuses to amend a development application by not later than 5 working days after the day the applicant asks for the correction, the authority is taken to have made the correction.

(4) If the planning and land authority corrects a development application on the authority's own initiative, the authority must give the applicant, or if there is more than 1, each applicant, written notice about the correction.

144 Amending development applications

(1) The planning and land authority may, if asked by the applicant, amend a development application.

(2) However, the planning and land authority must not amend the development application unless satisfied that—

(a) the development applied for after the amendment will be substantially the same as the development applied for originally; and

(b) the assessment track for the application will not change if the application is amended.

(3) The planning and land authority must, not later than 5 working days after the day the applicant asks for the amendment—

(a) amend the development application; or

(b) refuse to amend the development application.

(4) If the planning and land authority does not tell the applicant that the authority refuses to amend the application within the time given under subsection (3), the authority is taken to have amended the application.

145 Referred development application amended

(1) This section applies if—

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(a) a development application has been amended under section 144; and

(b) before it was amended, the application was referred to an entity under division 7.3.3.

(2) The planning and land authority must refer the development application to the entity.

Note Section 149 sets out what the entity to which the application is referred must do with the application.

(3) A referral under subsection (2) must include a brief description of how the application has been amended since the entity last saw it.

(4) However, if the planning and land authority is satisfied that the proposed amendment of the application does not affect any part of the application in relation to which the entity to which the application was referred made a comment, the authority need not refer the proposed amendment to the entity.

146 Notice of amended development applications

(1) This section applies if—

(a) the planning and land authority amends a development application; and

(b) the making of the application has been publicly notified.

(2) The planning and land authority must publicly notify the amended application under division 7.3.4 (Public notification of development applications and representations).

(3) However, the planning and land authority may waive the requirement to publicly notify the amended application for development approval if satisfied that—

(a) no-one other than the applicant will be adversely affected by the amendment; and

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(b) the environmental impact caused by the approval of the amendment will do no more than minimally increase the environmental impact of the development.

147 Withdrawal of development applications

An applicant may withdraw a development application at any time before the application is approved.

Division 7.3.3 Referral of development applications

148 Some development applications to be referred

(1) The planning and land authority must refer a development application prescribed by regulation to an entity prescribed by regulation.

(2) However, the planning and land authority must not refer a development application to an entity under subsection (1) if—

(a) the authority is satisfied that the applicant has adequately consulted the entity in relation to the application not earlier than 6 months before the day the application is made; and

(b) the entity agrees in writing to the proposed development.

(3) A written agreement to a proposed development mentioned in subsection (2) (b) is taken to be advice received in accordance with section 149 in relation to an application for development approval for the development.

(4) To remove any doubt, if the planning and land authority is not required to refer a development application to an entity under subsection (1)—

(a) the authority need not refer the application to the entity before deciding the application; and

(b) the decision of the authority is not affected by the authority not referring the application to the entity.

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149 Requirement to give advice in relation to development applications

(1) This section applies if a development application, including an amended application, is referred to an entity.

Note An amended application may be required to be referred to an entity under s 145.

(2) The entity must give the planning and land authority the entity's advice in relation to the development application not later than 15 working days after the day the authority gives the application to the entity or, if a shorter period is prescribed by regulation, not later than the end of the shorter period.

Note 1 A written agreement to a development proposal under section 148 (2) (b) is taken to be advice given in accordance with this section in relation to a development application for the proposal (see s 148 (3)).

Note 2 For how documents may be given, see the Legislation Act, pt 19.5.

150 Effect of no response by referral entity

For this Act, if an entity fails to provide advice in accordance with section 149 in relation to a development application referred to the entity, the entity is taken to have given advice that the entity supports the application.

151 Effect of advice by referral entity

(1) This section applies if—

(a) a development application, including a development application amended under section 144, is referred to an entity; and

(b) the entity gives advice on the application in accordance with section 149; and

Note Advice on an application is given in accordance with section 149 if the advice is given by an entity not later than 15 working days

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(or shorter prescribed period) after the day the application is given to the entity.

(c) the planning and land authority or Minister approves the application; and

(d) the approval is substantially consistent with the advice.

(2) The entity must not act inconsistently with the advice in relation to the development application unless—

(a) further information in relation to the development proposed in the application comes to the entity's attention (other than information mentioned in subsection (3)); and

(b) the entity did not have the further information when the entity gave the advice; and

(c) the further information is relevant to the advice the entity gave; and

(d) the entity would have given different advice if the entity had the further information before giving the advice.

(3) Subsection (2) (a) does not apply to further information in relation to a development proposed in an application if the information—

(a) was not required in the development application; and

(b) is required by the entity after the application is approved; and

(c) is consistent in all significant respects with information already provided by the applicant, except that it is more detailed.

(4) For this section, an entity ***acts inconsistently*** with advice in relation to a development application if—

(a) the advice is that the entity will issue or give an approval or other thing in relation to the development; and

(b) the application is approved; and

(c) the entity—

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(i) does not issue or give the approval or other thing consistent with the advice; or

(ii) issues or gives the approval or other thing in a way, or subject to a condition, that prevents the applicant undertaking the development approved.

Example of advice

that the entity will agree to the digging up of a footpath to allow the development

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) Also for this section, an entity ***acts inconsistently*** with advice in relation to an application if—

(a) the advice is that an activity to which the application relates does not require a particular authorisation (however described); and

(b) the entity prosecutes someone, or takes other compliance action, in relation to the activity because the activity is carried out without the particular authorisation.

Example of acting inconsistently

An Act prohibits activity A without an approval. The entity responsible for administering the Act gives advice under section 149 that the activity (activity B) in the application does not fall within the description of activity A. The application is approved consistent with the advice. The entity cannot prosecute a person for carrying out activity B in accordance with the approved application because activity B does fall within the description of activity A and the person did not have approval.

(6) For this section, an entity acts inconsistently with advice that the entity is taken under section 150 to have given in relation to a development application if the entity—

(a) refuses to do something required to be done by the entity to allow the applicant to undertake the development approved in the application; or

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(b) does something in a way, or subject to a condition, that prevents the applicant from undertaking the development approved in the application.

Division 7.3.4 Public notification of development applications and representations

152 What is *publicly notifies* for ch 7?

(1) For this chapter, the planning and land authority ***publicly notifies*** a development application if—

(a) for an application for a development proposal in the merit track that is prescribed by regulation—the authority notifies the application in the manner prescribed under subsection (2); or

(b) for any other application for a development proposal—the authority notifies the application under—

(i) section 153 and section 155; and

(ii) if the development proposal is, or includes, a lease variation—section 154 (if applicable).

Note 1 Only developments to which the merit track and impact track applies are required to be publicly notified (see s 121 and s 130). Also, the planning and land authority must re-notify some amended development applications (see s 146).

Note 2 An entity other than an applicant may apply for review of a decision to approve a development application in the merit track only if the application is required to be notified under section 153 and section 155 (see sch 1, item 4).

(2) For an application prescribed under subsection (1) (a), the planning and land authority may, by regulation, prescribe either of the following ways of notifying the application:

(a) under section 155 (Major public notification) and, if the development proposal is, or includes, a lease variation—

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section 154 (Public notice to registered interest holders) (if applicable);

(b) under section 153 (Public notice to adjoining premises) and, if the development proposal is, or includes, a lease variation—section 154 (if applicable).

153 Public notice to adjoining premises

(1) This section applies in relation to a development application if—

(a) the planning and land authority must notify the application under this section; and

(b) a place (the ***adjoining place***) other than unleased land adjoins the place (the ***developing place***) to which the application relates.

(2) If the adjoining place is occupied, the planning and land authority must give written notice of the making of the development application to the registered proprietor of the lease of the adjoining place at the adjoining place.

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

(3) If the adjoining place is unoccupied, the planning and land authority must give written notice of the making of the development application to the lessee of the adjoining place at the lessee's last-known address.

(4) The planning and land authority must give a new written notice under subsection (2) or (3) if, before the public notification period ends, the authority—

(a) becomes aware that the original notice is defective because its contents are incorrect, incomplete or include misleading information; and

(b) is satisfied that the defect is likely to—

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(i) unfavourably affect a person's awareness of the timing, location or nature of the development proposal in the application; or

(ii) deny or restrict the opportunity of a person to make representations about the application under section 156.

(5) However, the planning and land authority need not give public notice under subsection (2), (3) or (4) in relation to an adjoining place that is leased by the applicant or a person for whom the applicant has been appointed to act as agent.

Note This section is subject to s 411 and s 412.

(6) The validity of a development approval is not affected by a failure by the planning and land authority to comply with this section.

(7) In this section:

adjoins—a place ***adjoins*** another place if the place touches the other place, or is separated from the other place only by a road, reserve, river, watercourse or similar division.

registered proprietor—see section 234.

154 Public notice to registered interest-holders

(1) This section applies in relation to a development application if—

(a) the planning and land authority must notify the application under this section because it is, or includes, a lease variation; and

(b) a person other than the applicant has a registered interest in the land comprised in the lease to be varied.

(2) The planning and land authority must give written notice of the making of the development application to each person, other than the applicant, with a registered interest in the land comprised in the lease.

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(3) The planning and land authority must give a new written notice under subsection (2) if, before the public notification period ends, the authority—

(a) becomes aware that the original notice is defective because its contents are incorrect, incomplete or include misleading information; and

(b) is satisfied that the defect is likely to—

(i) unfavourably affect a person's awareness of the nature of the lease variation; or

(ii) deny or restrict the opportunity of a person to make representations about the application under section 156.

(4) The validity of a development approval is not affected by a failure by the planning and land authority to comply with this section.

155 Major public notification

(1) If the planning and land authority must notify a development application under this section, the authority must do each of the following:

(a) display a sign on the place to which the application relates that states the development proposed to be undertaken;

(b) publish notice of the making of the application in a daily newspaper.

Note This section is subject to s 411 and s 412.

(2) The planning and land authority must display a new sign under subsection (1) (a) if, before the public notification period ends—

(a) the authority—

(i) becomes aware that the original sign is defective because its contents are incorrect, incomplete or include misleading information; and

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(ii) is satisfied that the defect is likely to—

(A) unfavourably affect a person's awareness of the timing, location or nature of the development proposal in the application; or

(B) deny or restrict the opportunity of a person to make representations about the application under section 156; or

(b) the authority becomes aware that a sign was not displayed.

(3) Subsection (2) does not apply if a sign is displayed, but is subsequently moved, altered, damaged, defaced, covered or had access to it prevented.

(4) The planning and land authority must publish a new notice under subsection (1) (b) if, before the public notification period ends—

(a) the planning and land authority—

(i) becomes aware that the original notice is defective because its contents are incorrect, incomplete or include misleading information; and

(ii) is satisfied that the defect is likely to—

(A) unfavourably affect a person's awareness of the timing, location or nature of the development proposal in the application; or

(B) deny or restrict the opportunity of a person to make representations about the application under section 156; or

(b) the authority becomes aware that a notice was not published.

(5) A person commits an offence if—

(a) a sign is displayed under subsection (1) (a) or (2); and

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(b) the person moves, alters, damages, defaces, covers or prevents access to the sign while it is required to be displayed.

Maximum penalty: 5 penalty units.

(6) An offence against subsection (2) is a strict liability offence.

(7) Subsection (2) does not apply to a person if the person acts with the written approval of the chief planning executive.

(8) The validity of a development approval is not affected by a failure by the planning and land authority to comply with this section.

156 Representations about development applications

(1) Anyone may make a written representation about a development application that has been publicly notified under this Act.

Note Only developments in the merit track and impact track are required to be publicly notified (see s 121 and s 130). Also, the planning and land authority must re-notify some amended development applications (see s 146).

(2) A representation about a development application must be made during the public notification period for the application.

Note ***Public notification period*** for a development application—see s 157.

(3) The planning and land authority may, by notice published in a daily newspaper, extend the public notification period.

Note The planning and land authority may extend the public notification period after it has ended (see Legislation Act, s 151C).

(4) If the planning and land authority extends the public notification period under subsection (3), the authority must give the applicant for the development approval written notice of the extension.

(5) A person who makes a representation about a development application may, in writing, withdraw the representation at any time before the application is decided.

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(6) To remove any doubt, a representation about a development application—

(a) may relate to how the development proposed in the application meets, or does not meet, any finding or recommendation of the EIS for the development; and

(b) must not relate to the adequacy of the EIS for the development.

Note Representations about a draft EIS may be made under s 219.

157 Meaning of *public notification period* for development applications—Act

In this Act:

public notification period, for a development application, means—

(a) the period prescribed by regulation; or

(b) if the period prescribed is extended under section 156 (3)—the prescribed period as extended.

Division 7.3.4A Notice of development applications to registrar-general

157A Notice of development applications

(1) The planning and land authority must give written notice of each development application lodged with the authority to the registrar-general for recording under the *Land Titles Act 1925*, part 8A (Record of administrative interests).

(2) The notice under subsection (1) must include the following:

(a) a description of the development;

(b) the assessment track under which the development is to be assessed;

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(c) the approval status of the application;

Examples—approval status

1 pending
2 approved
3 approved on conditions
4 refused
5 under review by the ACAT

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).

(d) anything else prescribed by regulation.

(3) If the approval status of a development application changes, the planning and land authority must give written notice to the registrar-general of the change.

Division 7.3.5 Ministerial call-in power for development applications

158 Direction that development applications be referred to Minister

(1) The Minister may, in writing, direct the planning and land authority to refer to the Minister a development application that has not been decided by the authority.

Note 1 Section 13 provides that the planning and land authority must comply with directions given to it under this Act or a territory law.

Note 2 The power to make a statutory instrument (like the Minister's direction) about a matter includes the power to make the instrument for a particular class of matters (see Legislation Act, s 48 (2)).

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(2) The planning and land authority must give a copy of the Minister's direction in relation to a development application to each entity to whom the application—

(a) is required to be referred, or has been referred, under section 148; and

(b) would be required to be referred under section 148 but for section 148 (2).

(3) If the Minister gives a direction under subsection (1) in relation to an application, the planning and land authority—

(a) must take no further action that would lead to a decision by the authority on the application; but

(b) may continue to take procedural steps in relation to the application, unless the Minister's direction under subsection (1) directs the authority not to take a procedural step.

Examples—procedural steps

1 entity referral under div 7.3.3 (Referral of development applications)

2 public notification under div 7.3.7 (Extensions of time for deciding development applications)

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) When complying with the direction under subsection (1), the planning and land authority must also give the Minister—

(a) the information and documents received by the authority in relation to the application, including any advice given to the authority under division 7.3.3 (Referral of development applications); and

(b) any other relevant information and documents held by the authority.

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159 Minister may decide to consider development applications

(1) This section applies in relation to an application referred to the Minister under section 158.

(2) The Minister may decide to consider the application if, in the Minister's opinion—

(a) the application raises a major policy issue; or

(b) the application seeks approval for a development that may have a substantial effect on the achievement or development of the object of the territory plan as set out in the statement of strategic directions and objectives for each zone to which the application relates; or

(c) the approval or refusal of the application would provide a substantial public benefit.

(3) If the Minister is satisfied that the Minister should not consider the application, the Minister must refer the application back to the planning and land authority for decision.

Note Section 162 applies to an application referred back to the planning and land authority under s (3) (see s 162 (4)).

160 Minister decides to consider referred development applications

(1) This section applies if the Minister decides under section 159 to consider an application referred to the Minister.

(2) The Minister must—

(a) tell the planning and land authority about the decision to consider the application; and

(b) tell the applicant in writing about the decision and the grounds on which the decision was made; and

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(c) ensure that the Minister has the comments of the authority on the application; and

(d) approve or refuse the application under section 162 (Deciding development applications).

(3) A notice under subsection (2) (a) is a notifiable instrument.

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

(4) A notice under subsection (2) (a) must be notified under the Legislation Act not later than 15 working days after the day it is given.

161 After Minister decides referred development applications

(1) This section applies if the Minister decides an application under section 162.

(2) Not later than 3 sitting days after the day the Minister decides the application, the Minister must present to the Legislative Assembly a statement containing—

(a) a description of the development to which the application relates; and

(b) details of the land where the development is proposed to take place; and

(c) the applicant's name; and

(d) details of the Minister's decision; and

(e) the grounds for the decision.

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Division 7.3.6 Deciding development applications

162 Deciding development applications

(1) The planning and land authority or, for a development application that the Minister decides to consider under division 7.3.5 (Ministerial call-in power for development applications), the Minister, must—

(a) approve a development application; or

(b) approve a development application subject to a condition; or

(c) refuse a development application.

Note 1 For provisions about conditions, see s 165. Also, a development application to vary a lease granted as a concessional lease by surrender and regrant of the lease as a market value lease is subject to a condition (see s 262).

Note 2 Notice of a decision under s (1) must be given under div 7.3.8.

Note 3 If a development application has been referred to an entity under division 7.3.3, the notice of the decision under this section must include information about any comment by the referral entity and whether the authority has followed the entity's advice (see s 172).

Note 4 The criteria for a decision on an application to vary a lease granted as a concessional lease are in div 9.4.2.

Note 5 An applicant and, in some cases, other people may have a right to apply for review of a decision under s (1) (see ch 13 and sch 1). However, the right to apply for legal review of a decision by the Minister is time-limited (see s 410).

(2) However, the planning and land authority or Minister must refuse a development application to which division 9.4.2 (Varying concessional leases to remove concessional status) applies if the Minister decides under section 261 that considering the application is not in the public interest.

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(3) The planning and land authority or Minister must take action under subsection (1) in relation to a development application not later than the end of the prescribed time period for the application.

(4) To remove any doubt, the time for deciding a development application is not affected by—

(a) the referral of the application to the Minister by the planning and land authority under section 158; or

(b) the referral of the application back to the authority by the Minister under section 159.

(5) If the planning and land authority approves a development application that relates to a regulated tree, the authority may, under this section—

(a) if a tree management plan is already in force for the tree—approve an amendment of, or replacement for, the tree management plan; or

(b) in any other case—approve a tree management plan for the tree.

(6) In this section:

prescribed time period, for a development application, means—

(a) the period set out in part 7.2 (Assessment tracks for development applications) for deciding an application for a development proposal in the assessment track that applies to the proposal; or

(b) if the period mentioned in paragraph (a) is extended under division 7.3.7—the period mentioned in paragraph (a) plus each extension that applies to the application under division 7.3.7.

Note The time for deciding a development application is 20 working days for a development proposal in the code track (see s 118), 30 or 45 working days for a development proposal in the merit track (see s 122) or

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different periods for a development proposal in the impact track (see s 131).

163 Power to approve etc development applications deemed refused

(1) This section applies if—

(a) a development application has been made; and

(b) the time for deciding the application has ended; and

(c) neither the planning and land authority nor the Minister has decided the application under section 162.

(2) The planning and land authority or, if the Minister has decided to consider the application under division 7.3.5, the Minister, may approve the application, or approve the application subject to a condition, under section 162 despite the ending of the time for deciding the application.

(3) To remove any doubt, if neither the planning and land authority nor the Minister has decided an application under section 162, the authority is taken to have decided to refuse the application under the *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision).

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority or Minister will not be able to approve an application if the ACAT has decided an application for review of the deemed refusal (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

164 Refusal does not affect existing use

The refusal of a development application in relation to the use of land does not affect an existing use of the land.

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165 Conditional approvals

(1) This section applies in relation to the conditions subject to which the planning and land authority, or the Minister, may approve a development application under section 162 (1) (b).

(2) The approval under section 162 (1) (b)—

(a) must include any condition that is required to be included by the territory plan; and

(b) if the application is for the subdivision of a units plan under the *Unit Titles Act 2001*, section 165B (Subdivision of units plan—application)—must include a condition that the units plan is cancelled; and

(c) must not include a condition inconsistent with a condition required to be included by the territory plan.

(3) Following are examples of the conditions subject to which a development approval in relation to land may be given, other than an approval for a code track proposal:

(a) that a development, or a stated stage of a development, is to be carried out to the satisfaction of a stated entity;

(b) requiring a development to be carried out in stages within the periods stated in or under the approval;

(c) stating a period in which a development or any stage of a development is to be carried out;

(d) that the approval does not take effect unless a stated approval is revoked, amended or given;

(e) that a lease relating to the land be varied and the variation registered under the *Land Titles Act 1925*;

(f) requiring an existing licence to be varied;

(g) that another approval relating to the land be surrendered;

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(h) that stated things be done to prevent or minimise adverse environmental impacts;

(i) if the approval relates to a use of land, or a building or structure on the land—that the land, or buildings or structures on the land, may only be used for the use in stated circumstances;

(j) in relation to an approval to carry out a development for a stated period—

(i) that building works or other works carried out in or on a place the subject of the approval are to be removed at the end of the period; or

(ii) that the place where the development is to take place is to be restored to a particular state at the end of the period;

(k) that a bond be entered into securing performance against the conditions of the approval;

(l) if the approval is in relation to a place registered, or nominated for provisional registration, under the *Heritage Act 2004*—that the applicant enter into a heritage agreement under that Act for the conservation of the heritage significance of the place;

(m) that a development be carried out to a stated standard;

(n) that stated works, services or facilities that the relevant authority considers reasonable in the circumstances—

(i) be provided by the applicant on or to a place the subject of the approval, or on or to another place; or

(ii) be paid for completely or partly by the applicant; or

(iii) be provided on or to a place the subject of the approval by agreement between the applicant and the Minister responsible for the provision of the works, services or facilities;

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(o) that plans, drawings, specifications or other documents be prepared by the applicant and lodged with the planning and land authority for approval before the development or a stated part of it starts;

(p) requiring changes to be made to any plan, drawing, specification or other document forming part of the application for approval.

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) A code track proposal must not be approved subject to a condition unless the condition is prescribed by regulation for this subsection.

Examples of conditions that may be prescribed

1 requirement to keep documents or other administrative requirement

2 manage the impact of carrying out development, whether on or off development site

(5) The planning and land authority may approve an amendment to a plan, drawing or other document approved under subsection (3) (o) if the amendment—

(a) if made, would not make the approval inconsistent with section 179 (When development approval takes effect—activity not allowed by lease); and

(b) is not inconsistent with an approval under subsection (3) (o).

165A Lease to be varied to give effect to development approval

(1) This section applies if—

(a) the planning and land authority or the Minister approves a development application under section 162; and

(b) the development consists of or includes a lease variation.

(2) The planning and land authority must vary the lease in accordance with the terms of the approval.

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(3) This section is subject to division 9.6 (Lease variations).

Note Section 179 and s 180 set out when development approvals requiring lease variations take effect.

Division 7.3.7 Extensions of time for deciding development applications

166 Extension of time for further information—further information sufficient

(1) This section applies to a development application if—

(a) the planning and land authority gives the applicant a notice (a ***request notice***) under section 141 asking for further information in relation to the application; and

(b) the authority decides to give the applicant the request notice not later than 10 working days after the day the application is lodged; and

(c) the notice is given to the applicant as soon as possible after the authority decides to give the notice; and

(d) the authority has not asked for further information by request notice in relation to the application before; and

(e) the applicant gives the authority the information required by the request notice before the end of the period stated in the notice, or any extension of the period under section 141 (4).

(2) The time for deciding the development application under section 162 is extended by a period—

(a) starting on the day after the day the planning and land authority gives the applicant the request notice; and

(b) ending on the day the applicant gives the authority the information required by the request notice.

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167 Extension of time for further information—further information insufficient

(1) This section applies to a development application if—

(a) the planning and land authority gives the applicant a notice (a ***request notice***) under section 141 asking for further information in relation to the application; and

(b) the request notice is given to the applicant not later than 10 working days after the day the application is lodged; and

(c) the authority has not asked for further information by request notice in relation to the application before; and

(d) the applicant gives the authority information relating to the request notice before the end of the period stated in the request notice, or any extension of the period under section 141 (4); and

(e) the authority decides that the information given in relation to the request notice is insufficient and gives the applicant written notice (the ***insufficiency notice***) of the decision.

(2) The time for deciding the development application under section 162 is extended by a period—

(a) starting on the day after the day the planning and land authority gives the applicant the request notice; and

(b) ending 20 working days after the day the applicant receives the insufficiency notice.

168 Extension of time for further information—no further information given

(1) This section applies to a development application if—

(a) the planning and land authority gives the applicant a notice (a ***request notice***) under section 141 asking for further information in relation to the application; and

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(b) the request notice is given to the applicant not later than 10 working days after the day the application is lodged; and

(c) the authority has not asked for further information by request notice in relation to the application before; and

(d) the applicant does not give the authority the information asked for by the request notice before the end of the period stated in the request notice, or any extension of the period under section 141 (4).

(2) The time for deciding the development application under section 162 is extended by—

(a) a period of the same length as the period for giving further information stated in the request notice; or

(b) if the period for giving further information stated in the request notice has been extended under section 141 (4)—a period the same length as the period stated in the request notice as extended under section 141 (4).

169 Extension of time—application amended

(1) This section applies in relation to a development application if the application is amended under section 144.

(2) The time for deciding the development application under section 162 is extended by the period—

(a) starting on the day the application is made; and

(b) ending on the later of the following days:

(i) the day the application is amended under section 144;

(ii) if the amended application must be publicly notified under division 7.3.4 (see s 146 (1) (b))—the day after the public notification period for the application ends.

Note ***Public notification period*** for a development application—see s 157.

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Division 7.3.8 Notice of decisions on development applications

170 Notice of approval of application

(1) If a development application is approved under section 162 (1) (a) or (b), the planning and land authority must give written notice—

(a) to the applicant; and

(b) if the application approved relates to a variation of a lease—to the registrar-general for notification under the *Land Titles Act 1925*; and

(c) if the application approved does not relate to a variation of a lease—to the registrar-general for recording under the *Land Titles Act 1925*, part 8A (Record of administrative interests); and

(d) to each person who made a representation under section 156 about the application.

(2) A notice under subsection (1) in relation to an approval must—

(a) contain the following:

(i) a description of the place to which the approval relates;

(ii) a brief description of the development to which the approval relates; and

(b) state the assessment track that applied to the development proposal to which the approval relates; and

(c) state the date the development application was lodged; and

(d) state the date the development application was approved; and

(e) state the date the approval takes effect; and

Note For date of effect of an approval, see div 7.3.9.

(f) state whether the approval is subject to conditions; and

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Note For approvals subject to conditions, see s 165.

(g) state the place where, and times when, a copy of the development application and the approval may be inspected; and

(h) contain anything else prescribed by regulation.

(3) A notice to an applicant under subsection (1) (a) or another person under subsection (1) (d) must—

(a) set out the decision and the reasons for the approval; and

(b) if the approval is subject to conditions—set out the conditions; and

Note For approvals subject to conditions, see s 165.

(c) if the development application has been referred to a prescribed entity under division 7.3.3—set out a summary of the entity's advice given under section 149 and any response by the planning and land authority; and

(d) contain anything else prescribed by regulation.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

171 Notice of refusal of application

(1) If a development application is refused under section 162 (1) (c) (Deciding development applications), the planning and land authority must give written notice of the refusal to—

(a) the applicant; and

(b) each person who made a representation under section 156 about the application.

(2) However, to remove any doubt, the planning and land authority need not give notice of a decision deemed under the *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken

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to be decision) to have been made to refuse a development application.

(3) A notice under subsection (1) must set out the reasons for the decision.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

172 Notice of decision on referred development application

(1) This section applies in relation to a development application if—

(a) the application is referred to an entity under section 148; and

(b) the entity gives the planning and land authority advice in relation to the application; and

(c) the authority decides the application under section 162 (Deciding development applications).

(2) Notice of the decision under section 170 or section 171 must include a statement about—

(a) whether the planning and land authority followed the advice of the entity when making the decision; and

(b) if the authority did not follow the advice of the entity—why the authority did not follow the advice of the entity.

(3) However, the planning and land authority need not comply with subsection (2) in relation to an entity's advice on a development application if satisfied on reasonable grounds that the advice is not relevant to the application.

173 Notice if representation by 2 or more people

(1) This section applies if—

(a) a decision has been made under section 162 in relation to a development application; and

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(b) a representation has been made under section 156 about the application; and

(c) 2 or more people made the representation.

(2) The planning and land authority is taken to have complied with section 170 (1) (d) or section 171 (1) (b) in relation to the representation if the authority gives notice—

(a) if 1 person has been nominated as the person to whom notice of the decision is to be given and the person's address has been given to the authority—to the nominated person; or

(b) in any other case—to 1 of the people who made the representation.

174 Notice of decision to referral entities

(1) This section applies if—

(a) a decision has been made under section 162 in relation to a development application; and

(b) the application was referred to an entity under division 7.3.3.

(2) The planning and land authority must give a copy of the decision on the development application to each entity to which the application was referred.

Division 7.3.9 Effect and duration of development approvals

175 When development approvals take effect—no representations and no right of review

(1) This section applies if—

(a) the planning and land authority or Minister approves a development application under section 162; and

(b) either—

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(i) there are no representations about the application; or

(ii) there is no right to apply to the ACAT for review of the decision to approve the application because—

(A) the application is in the code track; or

(B) the application was not required to be publicly notified under section 155; or

(C) the proposal to which the application relates is exempt from review under a regulation; and

(c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and

(d) the approval is not subject to a condition that something must happen before the approval takes effect; and

(e) no application has been made under division 7.3.10 for reconsideration of the approval.

(2) The approval of the development application takes effect on the day after the day the application is approved.

176 When development approvals take effect—single representation with ACAT review right

(1) This section applies if—

(a) the planning and land authority or Minister approves a development application under section 162; and

(b) a single representation about the application has been made; and

(c) the development is not in the code track; and

(d) the application was required to be publicly notified under section 155 (Major public notification); and

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(e) the development proposal is not exempt from review under a regulation; and

(f) no application is made to the ACAT for review of the decision to approve the application by the end of the period of 20 working days after the day the person who made the representation was told about the decision; and

(g) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and

(h) the approval is not subject to a condition that something must happen before the approval takes effect; and

(i) no application has been made under division 7.3.10 for reconsideration of the approval.

(2) The approval of the development application takes effect 20 working days after the day notice of the decision to approve the application is given to the person who made the representation.

177 When development approvals take effect—multiple representations with ACAT review rights

(1) This section applies if—

(a) the planning and land authority or Minister approves a development application under section 162; and

(b) 2 or more representations about the application have been made; and

(c) the development is not in the code track; and

(d) the application was required to be publicly notified under section 155 (Major public notification); and

(e) the development proposal is not exempt from review under a regulation; and

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(f) no application is made to the ACAT for review of the decision to approve the application by the end of the period of 20 working days after the final notice of the decision is given; and

(g) the approval is not subject to a condition that something must happen before the approval takes effect; and

(h) no application has been made under division 7.3.10 for reconsideration of the approval.

(2) The approval of the development application takes effect 20 working days after the final notice of the decision to approve the application is given.

(3) In this section:

final notice, of a decision to approve a development application, means the day when every person who made a representation on the application has been given notice of the decision.

178 When development approvals take effect—ACAT review

(1) This section applies if—

(a) the planning and land authority or Minister approves a development application under section 162; and

(b) application is made to the ACAT for review of the decision to approve the application and the ACAT confirms or varies the decision, or makes a substitute decision;

(c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and

(d) the approval is not subject to a condition that something must happen before the approval takes effect; and

(e) no application has been made under division 7.3.10 for reconsideration of the approval.

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(2) The approval of the development application, as confirmed, varied or substituted by the ACAT, takes effect on the latest of the following days:

(a) the day the approval would take effect under this division if no application had been made to the ACAT for review of the decision to approve the application;

(b) the day that the confirmation, variation or substitution by the ACAT takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review).

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 69 provides that an order of the ACAT made under s 68 (3) is taken to be a decision of the decision-maker and takes effect from the day the order is made unless the ACAT orders otherwise.

179 When development approval takes effect—activity not allowed by lease

(1) This section applies if—

(a) the planning and land authority or Minister approves a development application under section 162; and

(b) the development includes an activity not allowed by a lease of the land where the activity is to be carried out; and

(c) the approval is not subject to a condition that something must happen before the approval takes effect; and

(d) no application has been made under division 7.3.10 for reconsideration of the approval.

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(2) The approval of the development application or, if an application for review has been made in relation to the approval, the approval as confirmed, varied or substituted by the ACAT, takes effect on the latest of the following days:

(a) the day the approval would take effect under this division if the development did not include an activity not allowed by a lease of the land where the activity is to be carried out;

(b) the day the variation of the lease to allow the activity takes effect;

(c) if an application for review has been made in relation to the approval—

(i) the day that the confirmation, variation or substitution by the ACAT takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review); or

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 69 provides that an order of the ACAT made under s 68 (3) is taken to be a decision of the decision-maker and takes effect from the day the order is made unless the ACAT orders otherwise.

(ii) the day after the day the application for review is withdrawn, dismissed or struck out.

Note A lease variation takes effect on registration (see *Land Titles Act 1925*, s 72A (3)).

180 When development approval takes effect—condition to be met

(1) This section applies if—

(a) the planning and land authority or Minister approves a development application under section 162; and

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(b) the development does not include an activity not allowed by a lease of the land where the activity is to be carried out; and

(c) the approval is subject to a condition that something must happen before the approval takes effect; and

(d) no application has been made under division 7.3.10 for reconsideration of the approval.

(2) The approval of the development application or, if an application for review has been made in relation to the approval, the approval as confirmed, varied or substituted by the ACAT, takes effect on the latest of the following days:

(a) the day the approval would take effect under this division if the approval were not subject to a condition that something must happen before the approval takes effect;

(b) the day the condition is complied with;

(c) if an application for review has been made in relation to the approval—

(i) the day that the confirmation, variation or substitution by the ACAT takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review); or

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 69 provides that an order of the ACAT made under s 68 (3) is taken to be a decision of the decision-maker and takes effect from the day the order is made unless the ACAT orders otherwise.

(ii) the day after the day the application for review is withdrawn, dismissed or struck out.

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181 When development approval takes effect—activity not allowed by lease and condition to be met

(1) This section applies if—

(a) the planning and land authority or Minister approves a development application under section 162; and

(b) the development includes an activity not allowed by a lease of the land where the activity is to be carried out; and

(c) the approval is subject to a condition that something must happen before the approval takes effect; and

(d) no application has been made under division 7.3.10 for reconsideration of the approval.

(2) The approval of the development application takes effect on the latest of the following days:

(a) the day the approval would take effect under section 179 if the approval were not subject to a condition that something must happen before the approval takes effect;

(b) the day the approval would take effect under section 180 if the development did not include an activity not allowed by a lease of the land where the activity is to be carried out.

182 When development approval takes effect—application for reconsideration

(1) This section applies if—

(a) the planning and land authority or Minister approves a development application (the ***original decision***) under section 162; and

(b) application is made under section 191 for reconsideration of the original decision; and

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(c) no application is made to the ACAT for review of the original decision within the time allowed; and

(d) the original decision is confirmed on reconsideration under division 7.3.10.

(2) The approval of the development application or, if an application for review has been made in relation to the decision to confirm the original decision, the decision as confirmed, varied or substituted by the ACAT, takes effect on the latest of the following days:

(a) the day the approval would take effect under this division if there were no application for reconsideration;

(b) the day after the day the approval is confirmed under division 7.3.10;

(c) if an application for review has been made in relation to the decision to confirm the original decision—

(i) the day that the confirmation, variation or substitution by the ACAT takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review); or

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 69 provides that an order of the ACAT made under s 68 (3) is taken to be a decision of the decision-maker and takes effect from the day the order is made unless the ACAT orders otherwise.

(ii) the day after the day the application for review is withdrawn, dismissed or struck out.

183 When development approval takes effect—reconsideration and review right

(1) This section applies if—

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(a) the planning and land authority or Minister refuses a development application under section 162, or approves the application subject to a condition; and

(b) 1 or more representations have been made about the application; and

(c) under division 7.3.10—

(i) the authority reconsiders the decision mentioned in paragraph (a) (the ***original decision***); and

(ii) the authority makes a decision (the ***substituted decision***) in substitution for the original decision, other than a decision to refuse the development application; and

(d) both of the following apply:

(i) the application has been publicly notified under section 155;

(ii) the substituted decision is not exempt from review under chapter 13.

(2) The approval of the development takes effect 20 working days after the day the substituted decision is made.

184 End of development approvals other than lease variations

(1) This section applies to a development approval other than—

(a) a development approval that consists only of a variation of a lease; or

(b) a part of a development approval that consists of a variation of a lease; or

(c) a development approval, or part of a development approval, that relates only to the use of land, or a building or structure on the land.

(2) A development approval to which this section applies ends if—

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(a) the development or any stage of the development has not started by the end of the period stated in the approval; or

(b) the development or any stage of the development has not finished by the end of the period stated in the approval; or

(c) if no period is stated in the approval for starting the development or any stage of the development—

(i) the development or stage of development has not been started 2 years after the day the approval takes effect; or

(ii) if an appeal is made to a court in relation to the approval—the development or stage of the development has not started 2 years after the day the appeal ends; or

Note ***Ends***—see the dictionary.

(d) the approval holder surrenders the approval to the planning and land authority; or

(e) if no time is stated in the approval for finishing the development—the development is not finished—

(i) 2 years after the day the development begins; or

(ii) if an extension of the 2-year period is granted under this section—at the end of the extended period; or

(iii) if an appeal is made to a court in relation to the approval—

(A) 2 years after the day the appeal ends; or

(B) if an extension of the 2-year period is granted under this section—the extended period after the appeal ends; or

Note ***Ends***—see the dictionary.

(f) if the approval relates to land comprised in a lease that requires the development to be completed within a stated time—

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(i) the development is not completed within the stated time; or

(ii) if the stated time has been extended under section 298B—the development is not completed within the extended time; or

(g) the approval is revoked under section 189.

(3) On application made before the end of a prescribed period, the planning and land authority may extend the prescribed period.

Note A development approval to which this section applies continues unless the approval ends under this section, s 185, s 186 or s 187.

(4) In this section:

prescribed period, in relation to a development approval, means—

(a) the time stated in the approval for finishing the development or a stage of the development; or

(b) if no time is stated in the approval for finishing the development—

(i) the period ending 2 years after the day the development begins; or

(ii) if an appeal is made to a court in relation to the approval—the period ending 2 years after the day the appeal ends.

Note ***Ends***—see the dictionary.

185 End of development approvals for lease variations

(1) This section applies to—

(a) a development approval that consists only of a variation of a lease; or

(b) a part of a development approval that consists of a variation of a lease.

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(2) The development approval, or part of the approval, ends—

(a) if—

(i) the lease is varied in accordance with the approval; or

(ii) the lease is terminated; or

(iii) the approval is revoked under section 189; or

(iv) the approval holder surrenders the approval to the planning and land authority; or

(v) the lease expires and no application is made under section 254 for a further lease; or

Note A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease.

(vi) the lease is surrendered, other than for a lease variation or renewal; or

(b) at the end of—

(i) the period of 2 years starting on the day after the day the approval takes effect; or

(ii) if an appeal is made to a court in relation to the approval—the period of 2 years starting on the day after the day the appeal ends.

Note 1 For s 185 (2), ***ends***—see the dictionary.

Note 2 A development approval to which this section applies continues unless the approval ends under s 184, this section, s 186 or s 187.

186 End of development approvals for use under lease without lease variation, licence or permit

(1) This section applies to a development approval, or part of a development approval, that—

(a) relates only to the use of land, or a building or structure on the land, under a lease (the ***affected lease***); and

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(b) does not involve a lease variation.

(2) The development approval ends if—

(a) the affected lease expires and no application is made under section 254 for a further lease; or

Note A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease.

(b) the approval is revoked under section 189; or

(c) if the approval states a period for the end of the approval—the period ends; or

(d) the approval is surrendered, other than for a lease variation or renewal; or

(e) the affected lease is surrendered (other than under section 254) or terminated.

Note A development approval to which this section applies continues unless the approval ends under s 184, s 185, this section or s 187.

(3) If only 1 use is allowed under the development approval, the development approval ends if the use in accordance with the development approval does not begin or happen before the end of—

(a) the period of 2 years starting on the day after the day the approval takes effect; or

(b) if an appeal is made to a court in relation to the approval—the period of 2 years starting on the day after the day the appeal ends.

Note ***Ends***—see the dictionary.

(4) If more than 1 use is allowed under the development approval, the development approval ends if none of the uses in accordance with the development approval begin or happen before the end of—

(a) the period of 2 years starting on the day after the day the approval takes effect; or

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(b) if an appeal is made to a court in relation to the approval—the period of 2 years starting on the day after the day the appeal ends.

Note ***Ends***—see the dictionary.

(5) To remove any doubt, a development approval relating to use does not end only because 1 or more of the following apply to the development or lease:

(a) the use is not continuous;

(b) someone deals with the affected lease;

(c) a further lease is granted for the affected lease on application under section 254, whether the grant happens immediately after the expiry of the affected lease or otherwise.

Examples of use not being continuous for par (a)

1 the use is interrupted

2 the use is intermittent

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).

(6) The planning and land authority must tell the registrar-general about the ending of a development approval to which this section applies if—

(a) the authority gave the registrar-general notice of the approval; and

(b) the approval is surrendered to the authority.

(7) In this section:

deal with a lease—see section 234.

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187 End of development approvals for use under licence or permit

(1) This section applies to a development approval, or part of a development approval, that relates only to the use of land under a licence or permit.

(2) The development approval ends if—

(a) the approval is revoked under section 189; or

(b) if the approval states a period for the end of the approval—the period ends; or

(c) the approval is surrendered; or

(d) the licence or permit has expired and has not been renewed on an application to renew the licence or permit made within 6 months after the day of expiry; or

(e) the licence or permit ends other than by expiring.

Note A development approval to which this section applies continues unless the approval ends under s 184, s 185, s 186 or this section.

(3) The development approval ends if use in accordance with the development approval does not begin or happen before the end of—

(a) the period of 2 years starting on the day after the day the approval takes effect; or

(b) if an appeal is made to a court in relation to the approval—the period of 2 years starting on the day after the day the appeal ends.

Note ***Ends***—see the dictionary.

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(4) To remove any doubt, a development approval relating to use does not end only because the use is not continuous.

Examples of use not being continuous

1 the use is interrupted

2 the use is intermittent

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).

188 Development approvals continue unless ended

(1) This section applies to a development approval to which any of the following applies:

(a) section 184 (End of development approvals other than lease variations);

(b) section 185 (End of development approvals for lease variations);

(c) section 186 (End of development approvals for use under lease without lease variation, licence or permit);

(d) section 187 (End of development approvals for use under licence or permit).

(2) To remove any doubt, a development approval to which this section applies continues unless the approval ends in accordance with a section mentioned in subsection (1).

189 Revocation of development approvals

(1) The planning and land authority may revoke a development approval—

(a) if satisfied that the approval was obtained by fraud or misrepresentation; or

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(b) if the approval is in relation to a place registered, or nominated for provisional registration, under the *Heritage Act 2004*—if the applicant is convicted of an offence against this part or the *Heritage Act 2004*.

(2) The planning and land authority must tell the registrar-general about the revocation of the development approval if the authority gave the registrar-general notice of the approval.

Division 7.3.10 Reconsideration of decisions on development applications

190 Definitions—div 7.3.10

In this division:

original application—see section 191 (1) (a).

original decision—see section 191 (1) (a).

reconsideration application—see section 191 (3).

191 Applications for reconsideration

(1) This section applies if—

(a) a development application, or an application for amendment of a development approval, (the ***original application***) has been approved subject to a condition or refused (the ***original decision***) by the planning and land authority; and

(b) an application has not previously been made under this section for reconsideration of the original decision; and

(c) the ACAT has not decided an application for review of the original decision.

(2) However, this section does not apply in relation to—

(a) the refusal of a development application, or an application for amendment of a development approval, in the code track; or

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(b) the refusal of a development application to which division 9.4.2 (Varying concessional leases to remove concessional status) applies if the Minister decides that considering the application is not in the public interest.

(3) The applicant for the original application may apply (the ***reconsideration application***) for reconsideration of the original decision.

(4) The reconsideration application must—

(a) be in writing signed by the applicant; and

(b) if the application is made by someone other than the lessee of the land to which the application relates and the land is not unleased—also be signed by the lessee of the land.

(5) The reconsideration application must be made not later than—

(a) 20 working days after the day the applicant is told about the original decision by the planning and land authority; or

(b) any longer period allowed by the planning and land authority.

Note The planning and land authority may extend the period after the end of the period being extended (see Legislation Act, s 151C (3)).

(6) The reconsideration application must set out the grounds on which reconsideration of the original decision is sought.

Note Making an application under this section stays the operation of the decision for which reconsideration is sought.

192 Notice to ACAT of reconsideration application

(1) This section applies if—

(a) a development application, or an application for amendment of a development approval, (the ***original application***) has been approved subject to a condition or refused (the ***original decision***) by the planning and land authority; and

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(b) a person applies for reconsideration of the original decision; and

(c) the person also applies to the ACAT for review of the original decision, whether before or after applying for reconsideration; and

(d) the ACAT gives the planning and land authority notice of the application for review.

(2) The planning and land authority must tell the ACAT in writing about the application for reconsideration.

193 Reconsideration

(1) If the planning and land authority receives a reconsideration application, the authority must—

(a) reconsider the original decision; and

(b) not later than 20 working days after the day the authority receives the application—

(i) make any decision in substitution for the original decision that the authority could have made on the original application; or

(ii) confirm the original decision.

(2) However, the planning and land authority must not take action under subsection (1) (b) if the ACAT has decided an application for review of the original decision.

(3) Also, the planning and land authority may only reconsider the original decision to the extent that the development proposal approved or refused in the original decision or part of the original decision—

(a) is subject to a rule and does not comply with the rule; or

(b) is not subject to a rule.

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(4) The 20 working days mentioned in subsection (1) may be extended for a stated period by agreement between the planning and land authority and the applicant.

(5) In reconsidering the original decision, the planning and land authority—

(a) need not publicly notify the reconsideration application under division 7.3.4; but

(b) must give written notice of the reconsideration application to anyone who made a representation under section 156 about the original application, allow the person reasonable time (that is not shorter than 2 weeks) to make a representation on the reconsideration application, and consider any representation made within the time allowed.

(6) Also, in reconsidering the original decision, the planning and land authority—

(a) must consider any information available to the authority when it made the original decision and information given in the reconsideration application; and

(b) may consider any other relevant information.

Example of other relevant information

information from representations

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) The planning and land authority must ensure that, if the original decision is made on the authority's behalf by a person (the ***original decision-maker***), the authority or someone other than the original decision-maker reconsiders the decision.

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194 No action by authority within time

If the planning and land authority does not make a substitute decision, or confirm the original decision, by the end of the 20 working days, or the 20-working day period as extended by agreement, mentioned in section 193, the authority is taken to have confirmed the original decision.

195 Notice of decisions on reconsideration

As soon as practicable after reconsidering the original decision, the planning and land authority must give written notice of the decision on the reconsideration to—

(a) the applicant; and

(b) anyone who was given notice of the reconsideration application under section 193 (5) (b); and

(c) if the original decision was an approval subject to conditions and the authority gave the registrar-general notice of the approval—the registrar-general.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

Division 7.3.11 Correction and amendment of development approvals

196 Correcting development approvals

(1) The planning and land authority may, on its own initiative or on application, correct a formal error in a development approval.

(2) If the planning and land authority corrects a development approval, the authority must give the approval holder, or if there is more than 1, each approval holder, written notice about the correction.

Note ***Approval holder***—see dict.

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197 Applications to amend development approvals

(1) This section applies if—

(a) the planning and land authority has given development approval for a development proposal; and

(b) the development proposal changes (the ***changed development proposal***) so that it is not covered by the development approval; and

(c) section 198C (When development approvals do not require amendment) does not apply to the changed development proposal.

Note If the development proposal changes in accordance with the development approval condition requiring the change, the change is covered by the approval, so this section does not apply.

(2) An approval holder may apply to the planning and land authority to amend the development approval so that it approves the changed development proposal.

(3) An application under subsection (2) must—

(a) be in writing signed by the applicant; and

(b) if the application is made by someone other than the lessee of the land to which the application relates, be signed by—

(i) if the land to which the application relates is subject to a lease—the lessee of the land; or

(ii) if the land to which the application relates is public land or unleased land—the custodian for the land; or

(iii) in any other case—the planning and land authority.

(4) A person who signs an application under subsection (3) (b) (i) is taken to be an applicant in relation to the application.

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198 Deciding applications to amend development approvals

(1) In deciding whether to amend a development approval in accordance with an application under section 197, the planning and land authority must consider the application, and take action in relation to the application, as if—

(a) the development originally approved had been completed; and

(b) the application for amendment were an application for approval of a development proposal (the ***proposed development***) to change the completed development to give effect to the amendment.

Example

Philip has development approval (the ***original approval***) to build a house. Philip starts to build the house, but discovers that he needs an extra room in the house. He applies to amend the original approval.

In considering whether to amend the original approval, the planning and land authority must treat the application to amend as if the house has been built in accordance with the original approval, and the application is for approval to add an extra room. This means the authority must assess the application in the assessment track that would apply to an application to add an extra room, and any requirement to notify agencies or publish the application would have to be followed.

Note 1 An application for amendment of a development application may be reconsidered under pt 7.3.10 (see s 191 (1) (a)) and the approval holder may apply for review of a decision to refuse to amend the approval (see sch 1, item 13).

Note 2 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).

Note 3 The planning and land authority must decide whether to amend the development approval as soon as possible (see Legislation Act, s 151B).

(2) However, section 162 (3) (Deciding development applications) does not apply to the application.

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(3) The planning and land authority must refuse to amend the development approval if satisfied that—

(a) if the original proposal was in the code track—the changed development proposal would be in the merit track or impact track; or

(b) if the original proposal was in the merit track—the changed development proposal would be in the impact track; or

(c) the changed development proposal would be in breach of a condition on the approval imposed (rather than confirmed or varied) by a court or tribunal.

(4) Also, the planning and land authority must refuse to amend a development approval unless satisfied that, after the amendment, the development approved will be substantially the same as the development for which approval was originally given.

(5) To remove any doubt, only the application for the amendment need be publicly notified if—

(a) public notification of the proposed development is required under the assessment track that applies to the proposed development; and

(b) the requirement to publicly notify the application is not waived under section 198B.

198A Exception to referral requirement under s 198 (1) (b)

(1) This section applies if—

(a) a development application was referred to an entity under division 7.3.3 (Referral of development applications); and

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(b) an application for amendment of the development approval to which the development application related must be referred to the entity under section 198 (1) (b); and

Note 1 Under s 198 (1) (b), an application for amendment is deemed to be an application for development approval, which would ordinarily require the application to be referred to relevant entities under div 7.3.3.

Note 2 For the referral requirement, see s 145.

(c) the planning and land authority is satisfied that the application for amendment does not affect any part of the development approval in relation to which the entity made a comment.

(2) Despite section 198 (1) (b), the planning and land authority need not refer the application for amendment to the entity.

198B Waiver of notification requirement under s 198 (1) (b)

Despite section 198 (1) (b), the planning and land authority may waive the requirement to publicly notify an application for amendment of a development approval if satisfied that—

(a) no-one other than the applicant will be adversely affected by the amendment; and

(b) the environmental impact caused by the amendment will do no more than minimally increase the environmental impact of the development.

Note For the notification requirement, see s 146.

198C When development approvals do not require amendment

(1) This section applies if—

(a) the planning and land authority has given development approval for a development proposal; and

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(b) the development proposal changes (the ***changed development proposal***) so that it is not covered by the development approval; and

(c) a circumstance prescribed by regulation under subsection (3) applies.

(2) The changed development proposal is taken to be in accordance with the development approval.

(3) A regulation may prescribe circumstances for subsection (1) (c).

Note 1 The development may still need building approval, or further building approval, under the *Building Act 2004*.

Note 2 The development must also comply with the lease for the land on which it is carried out.

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Part 7.4 Developments without approval

199 Offence to develop without approval

(1) A person commits an offence if—

(a) the person undertakes development without development approval; and

(b) the development requires development approval; and

(c) the person knows that the development requires development approval.

Maximum penalty:

(a) for an individual—2 000 penalty units; or

(b) for a corporation—2 500 penalty units.

(2) A person commits an offence if—

(a) the person undertakes development without development approval; and

(b) the development requires development approval; and

(c) the person is reckless about whether the development requires development approval.

Maximum penalty: 1 000 penalty units.

(3) A person commits an offence if—

(a) the person undertakes development without development approval; and

(b) the development requires development approval; and

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(c) the person is negligent about whether the development requires development approval.

Maximum penalty: 500 penalty units.

(4) A person commits an offence if—

(a) the person undertakes development without development approval; and

(b) the development requires development approval.

Maximum penalty: 60 penalty units.

(5) An offence against subsection (4) is a strict liability offence.

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves—

(a) that before undertaking the development the defendant took reasonable steps to find out whether the development required development approval; or

(b) that—

(i) an exemption assessment D notice was issued before, but not more than 3 months before, the day the defendant started to undertake the development, stating that the development was an exempt development under section 133; and

(ii) the defendant was not aware, and could not reasonably have been aware, that the notice was incorrect; or

(c) that—

(i) before the day the defendant started to undertake the development, a building approval or approval of amended building work plans under the *Building Act 2004* for which development approval was required was issued; and

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(ii) the building work was carried out when the building approval, or the approval for the amended plans, was in force; and

(iii) the defendant was not aware, and could not reasonably have been aware, that the building approval, or the approval of the amended plans, should not have been issued without development approval.

Note See the *Building Act 2004*, s 28 (for issue of building approvals) and s 32 (for amendment of approved plans).

(7) To remove any doubt, this section does not apply to development that is lawful because of section 203 or section 204.

Note A person also commits an offence if the person occupies or uses, or allows someone else to occupy or use, a building, or part of a building, if a certificate of occupancy has not been issued for the building or part of the building (see *Building Act 2004*, s 76 (1)).

200 Offence to undertake prohibited development

(1) A person commits an offence if—

(a) the person undertakes development; and

(b) the development is prohibited; and

(c) the person knows that the development is prohibited.

Maximum penalty:

(a) for an individual: 2 000 penalty units; or

(b) for a corporation: 2 500 penalty units.

(2) A person commits an offence if—

(a) the person undertakes development; and

(b) the development is prohibited; and

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(c) the person is reckless about whether the development is prohibited.

Maximum penalty: 1 000 penalty units.

(3) A person commits an offence if—

(a) the person undertakes development; and

(b) the development is prohibited; and

(c) the person is negligent about whether the development is prohibited.

Maximum penalty: 500 penalty units.

(4) A person commits an offence if—

(a) the person undertakes development; and

(b) the development is prohibited.

Maximum penalty: 60 penalty units.

Note Section 137 and s 201 disapply s (1) to (4) in certain cases.

(5) An offence against subsection (4) is a strict liability offence.

(6) To remove any doubt, this section does not apply to development that is lawful—

(a) because of section 201, section 203 or section 204; or

(b) because it is in accordance with a development approval granted on an application mentioned in subsection 137 (2) (a).

201 Development authorised by approval before prohibition

(1) This section applies if—

(a) a person undertakes development; and

(b) the development is in accordance with a development approval given in relation to the development; and

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(c) the development becomes prohibited.

(2) Section 200 (1) to (4) does not apply to the development if it is undertaken in accordance with the development approval, despite any other provision of this Act.

Note 1 The development may still need building approval, or further building approval, under the *Building Act 2004*.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

202 Offence to develop other than in accordance with conditions

(1) A person commits an offence if—

(a) the person undertakes development; and

(b) the person has development approval for the development; and

(c) the development approval is conditional; and

(d) the person does not comply with a condition of the development approval when undertaking the development.

Maximum penalty: 60 penalty units.

(2) An offence against subsection (1) is a strict liability offence.

203 Development other than use lawful when begun

(1) This section applies if—

(a) a development, other than a development that is a use, is exempt from requiring development approval under a development table or by regulation; and

(b) a person undertakes, or begins, the development; and

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(c) after the person undertakes, or begins, the development, the development stops being exempt because of an amendment of this Act.

Note A reference to an Act includes a reference to the statutory instruments (eg the territory plan) made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) The development is lawful despite any other provision of this Act.

204 Use as development lawful when begun

(1) This section applies to the use of land, or a building or structure on the land, if—

(a) the use, when it began, was exempt from requiring development approval in a development table or by regulation; and

(b) the use is authorised by—

(i) a lease (the ***affected lease***) for the land; or

(ii) a licence under this Act; or

(iii) a permit under the *Roads and Public Places Act 1937*; or

(iv) section 247; and

(c) the use stops being exempt because of an amendment of this Act.

Note A reference to an Act includes a reference to the statutory instruments (eg the territory plan) made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) Also, this section applies in relation to a use of land, or a building or structure on the land, even if 1 or more of the following apply in relation to the use:

(a) the use is not continuous;

(b) someone deals with the affected lease;

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(c) a further lease is granted for the affected lease on application under section 254, whether the grant happens immediately after the expiry of the affected lease or otherwise.

(3) However, this section does not apply in relation to the use of land, or a building or structure on the land, if—

(a) the affected lease is surrendered (other than under section 254) or terminated; or

(b) if the use is authorised by a licence under this Act or a permit under the *Roads and Public Places Act 1937*—the licence or permit ends—

(i) whether on expiry or otherwise; and

(ii) even if renewed; or

(c) the affected lease expires and no application is made under section 254 for a further lease.

Note A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease (see s 254 (1) (c)).

(4) The use of the land, or building or structure, is lawful while authorised by a lease for the land, a licence, a permit or section 247, despite any other provision of this Act.

(5) In this section:

deal with a lease—see section 234.

205 Development applications for developments undertaken without approval

(1) This section applies if—

(a) a development has been undertaken; and

(b) development approval was required for the development; and

(c) there was no development approval for the development.

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(2) If the development becomes an exempt development—

(a) the development is taken to have been an exempt development since the development was started; but

(b) the exemption of the development does not affect any proceeding under this part, whether or not the proceeding starts before the development became exempt.

(3) The lessee of the land where the development was undertaken may apply for approval for the development under part 7.3 (Development applications).

(4) The planning and land authority must treat an application for development approval for the development as if the development had not been undertaken, subject to section 139 (2) (i) (Form of development applications).

Note Development applications (including an application to which this section applies) are decided under s 162.

(5) To remove any doubt, the making of an application for approval of a development to which this section applies, or the approval of the application, does not affect any proceeding under this part, whether or not the proceeding starts before the making or approval of the application.

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Chapter 8 Environmental impact statements and inquiries

Notes to ch 8

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

Part 8.1 Interpretation—ch 8

206 Definitions—ch 8

In this chapter:

draft EIS—see section 216 (2) (a).

EIS—see section 208.

environmental impact statement means an EIS (see s 208).

inquiry means an inquiry into an EIS established under section 228.

proponent, for a development proposal, means the person proposing the proposal.

Note See also s 207.

representation, about a draft EIS, means a representation made about the draft EIS under section 219.

scoping document, for a development proposal—see section 212 (2) (b).

Note For when an EIS is completed, see s 209.

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207 Proponents

(1) The relevant Minister in relation to a defined decision may, in writing, designate a person or territory authority as the proponent in relation to the decision.

(2) In this section:

defined decision means a decision of the Territory, the Executive, a Minister or a territory authority about a proposal in relation to which a Minister is empowered—

(a) to direct that an EIS be prepared; or

(b) to establish an inquiry panel to inquire about the EIS.

Note Inquiry panels are established under pt 8.3.

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

(a) in relation to a statement or inquiry—the statement or inquiry is authorised to be prepared or conducted; or

(b) in relation to a defined decision—the relevant decision is authorised to be made.

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Part 8.2 Environmental impact statements

208 What is an *EIS* and a *s 125-related EIS*?

(1) An ***EIS*** is an environmental impact statement prepared as prescribed by regulation.

(2) A ***s 125-related EIS*** is an environmental impact statement prepared for a development proposal in a development application in relation to which the Public Health Act Minister has made a declaration for section 125 (Declaration by Public Health Act Minister affects assessment track).

Note An environmental impact statement is an investigation of the potential impact of a project on the environment. An environmental impact statement is taken into account in deciding development applications but the completion of an environmental impact statement is not itself a development application or a development approval process.

209 When is an EIS *completed*?

(1) For this Act, an EIS (other than a s 125-related EIS) is ***completed*** if—

(a) the Minister gives the planning and land authority notice under section 226 (Notice of no action on EIS given to Minister) in relation to the EIS; or

(b) the Minister has not decided to establish an inquiry panel to inquire about the EIS; or

(c) the Minister has established an inquiry panel for the EIS and—

(i) the panel has reported the results of the inquiry; or

(ii) the time for reporting under section 230 has ended.

(2) To remove any doubt, for subsection (1), it does not matter whether or not the Minister intends to present, or has presented, a copy of the EIS to the Legislative Assembly under section 227.

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209A When is a s 125-related EIS completed?

(1) For this Act, a s 125-related EIS is ***completed*** if—

(a) notice in relation to the EIS is given to the planning and land authority by—

(i) the Minister under section 226 (Notice of no action on EIS given to Minister); and

(ii) the Public Health Act Minister under the *Public Health Act 1997*, section 134 (3) (b); or

(b) at least 15 working days have elapsed since the EIS was given to the Minister and the Public Health Act Minister and—

(i) the Minister has not decided, within the 15-day period mentioned in section 228 (1), to establish an inquiry panel to inquire about the EIS; and

(ii) the Public Health Act Minister has not decided, within the 15-day period mentioned in the *Public Health Act 1997*, section 134 (4), that an inquiry panel to inquire about the EIS must be established; or

(c) both of the following apply:

(i) notice in relation to the EIS is given to the authority by—

(A) the Minister under section 226; or

(B) the Public Health Act Minister under the *Public Health Act 1997*, section 134 (3) (b);

(ii) at least 15 days have elapsed since the EIS was given to the Minister and the Public Health Act Minister and—

(A) if the Minister gave the authority notice in relation to the EIS under section 226—the Public Health Act Minister has not decided, within the 15-day period mentioned in the *Public Health Act 1997*,

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section 134 (4), that an inquiry panel to inquire about the EIS must be established; or

(B) in any other case—the Minister has not decided, within the 15-day period mentioned in section 228 (1), to establish an inquiry panel to inquire about the EIS; or

(d) the Minister has established an inquiry panel for the EIS and—

(i) the panel has reported the results of the inquiry; or

(ii) the time for reporting under section 230 has ended.

(2) To remove any doubt, for subsection (1), it does not matter whether or not the Minister intends to present, or has presented, a copy of the EIS to the Legislative Assembly under section 227.

210 When is a completed EIS required?

A completed EIS is required in relation to a development proposal if this Act requires a completed environmental impact statement in relation to the proposal, unless the application for development approval for the proposal is exempted under section 211.

Note 1 A completed EIS is required under s 127. See div 7.2.4 for requirements for applications in the impact track.

Note 2 A development application in the impact track cannot be made without a completed EIS unless an exemption has been granted under s 211 before the application is made.

211 EIS not required if development application exempted

(1) The Minister may exempt a development application for development approval for a development proposal from a requirement to include an EIS if satisfied that the expected environmental impact of the development proposal has already been sufficiently addressed by another study, whether or not the study relates to the particular development proposal.

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(2) An exemption is a notifiable instrument.

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

(3) A regulation may prescribe criteria that the Minister must take into account in deciding whether the environmental impact of the development proposal has been sufficiently addressed by the other study.

(4) The planning and land authority must put an electronic link to the exemption on the authority website.

(5) An exemption expires 18 months after the day it is notified.

212 Scoping of EIS

(1) This section applies if the proponent for a development proposal for which a completed EIS is required applies to the planning and land authority under this section.

Note If a form is approved under s 425 for the application, the form must be used.

(2) The planning and land authority must—

(a) identify the matters that are to be addressed by an EIS in relation to the development proposal; and

(b) prepare a written notice (the ***scoping document***) of the matters.

Note The time for giving a scoping document to the applicant is set out in s 214.

(3) A scoping document is a notifiable instrument.

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

(4) A regulation may prescribe entities the planning and land authority may or must consult in preparing a scoping document.

(5) The planning and land authority must put an electronic link to the scoping document on the authority website.

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213 Contents of scoping document

(1) The matters identified in the scoping document for a development proposal must include any minimum content for scoping documents prescribed by regulation.

(2) The planning and land authority may, in the scoping document for a development proposal, require the proponent to engage a consultant to help prepare an EIS for the proposal.

(3) In this section:

consultant means a person who satisfies the criteria prescribed by regulation.

Note See also s 426 (2) (c) (Regulation-making power).

214 Time to provide scoping document

(1) This section applies if a person applies under section 212 in relation to a development proposal.

(2) The planning and land authority must give the scoping document for the development proposal to the applicant not later than—

(a) 30 working days after the day the application is made; or

(b) if the chief planning executive allows a further period under subsection (3)—the end of the further period allowed.

(3) The chief planning executive may, in writing, allow a further period for the planning and land authority to provide a scoping document in relation to a development proposal if satisfied that, because of the complexity of the proposal and the consultation required, the further period is necessary.

(4) If the chief planning executive allows a further period under subsection (3) in relation to a development proposal, the chief planning executive must tell the applicant in writing.

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215 Term of scoping document

A scoping document expires 18 months after the day it is notified.

216 Preparing draft EIS

(1) This section applies if the planning and land authority gives the proponent of a development proposal a scoping document for the proposal.

(2) The proponent must—

(a) prepare a document (a ***draft EIS***) that addresses each matter raised in the scoping document for the development proposal; and

(b) give the draft EIS to the planning and land authority for public notification.

217 Public notification of draft EIS

The planning and land authority ***publicly notifies*** a draft EIS by—

(a) putting a notice in a daily newspaper and on the authority website stating—

(i) that the draft EIS is available for public inspection and for purchase at stated places and times; and

(ii) how and when representations may be made on the draft EIS; and

(b) making 1 or more copies of the draft EIS available as stated in the notice; and

(c) if practicable, making a copy of the draft EIS available on the authority website.

Note ***Authority website***—see the dictionary.

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218 Meaning of *public consultation period* for draft EIS

In this Act:

public consultation period, for a draft EIS, means—

(a) the period, not less than 20 working days, when representations may be made on the draft EIS under section 217 (a) (ii); or

(b) if the period is extended under section 219 (3)—the period as extended.

219 Representations about draft EIS

(1) Anyone may make a representation about a draft EIS publicly notified under section 217.

(2) A representation about a draft EIS must be made during the public consultation period for the draft EIS.

(3) The planning and land authority may, by notice published in a daily newspaper, extend the public consultation period.

Note The planning and land authority may extend the public consultation period after it has ended (see Legislation Act, s 151C).

(4) If the planning and land authority extends the public consultation period under subsection (3), the authority must give the proponent of the development proposal written notice of the extension.

(5) A person who makes a representation about a draft EIS may, in writing, withdraw the representation at any time before the planning and land authority accepts the EIS under section 222.

(6) In this section:

public consultation period, for a draft EIS—see section 218.

Note The public consultation period may be extended under s (3).

220 Publication of representations about draft EIS

(1) This section applies if—

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(a) the planning and land authority has publicly notified a draft EIS under section 217; and

(b) a person makes a representation about the draft EIS in accordance with the notice under section 217 (a).

(2) The planning and land authority must—

(a) make a copy of the representation available on the authority website until—

(i) the EIS is completed; or

Note For when an EIS is completed, see s 209.

(ii) the representation is withdrawn; and

(b) give a copy of the representation to the proponent of the development proposal.

Note 1 This section is subject to s 411 and s 412.

Note 2 ***Authority website***—see dict.

221 Revising draft EIS

(1) This section applies if—

(a) a draft EIS for a development proposal has been publicly notified under section 217; and

(b) the public consultation period for the draft EIS has ended.

Note The public consultation period may be extended under s 219 (3).

(2) The proponent of the development proposal must revise the draft EIS and give the revised EIS to the planning and land authority.

(3) However, the revised EIS must—

(a) address each matter raised in the scoping document for the development proposal; and

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(b) for any matter raised in a representation made within the public consultation period for the draft EIS—

(i) address the matter; and

(ii) demonstrate how the matter has been taken into account in the revised EIS.

222 Authority consideration of EIS

(1) This section applies—

(a) if the proponent of a development proposal gives the planning and land authority an EIS under section 221 not later than 18 months after the scoping document for the proposal is given to the proponent under section 214; or

(b) if—

(i) the proponent of a development proposal gives the authority an EIS under section 221 more than 18 months after the scoping document for the proposal is given to the proponent under section 214; and

(ii) the authority is satisfied that there has been no significant change to the circumstances surrounding the development proposal that is not sufficiently addressed in the EIS; or

(c) if the proponent of a development proposal gives the authority an EIS in accordance with a notice under section 224 (2).

(2) The planning and land authority must—

(a) accept the EIS if satisfied that the EIS sufficiently—

(i) addresses each matter raised in the scoping document for the proposal; and

(ii) takes any timely representation on the draft EIS into account; and

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(iii) demonstrates how any timely representation has been taken into account; or

(b) if section 224 applies—take action under section 224; or

(c) if section 224A applies—reject the EIS.

(3) In this section:

EIS includes an EIS revised under section 224.

timely representation, on a draft EIS, means a representation—

(a) on the draft EIS; and

(b) made in accordance with section 219.

223 EIS given to authority out of time

(1) This section applies if—

(a) the proponent of a development proposal gives the planning and land authority an EIS under section 221 more than 18 months after the scoping document for the proposal is given to the proponent under section 214; and

(b) the authority is satisfied that—

(i) there has been significant change to the circumstances surrounding the proposal; and

(ii) the change is not sufficiently addressed in the EIS.

(2) The planning and land authority must—

(a) reject the EIS; and

(b) give the proponent written notice of the rejection.

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224 Chance to address unaddressed matters

(1) This section applies in relation to the EIS for a development proposal given to the planning and land authority under section 221 if—

(a) the authority is not satisfied in relation to a matter mentioned in section 222 (2) (a); and

(b) the authority has not given the proponent of the development proposal more than one notice under this section.

(2) The planning and land authority must give the proponent of the development proposal written notice that—

(a) the authority does not accept the EIS under section 222; and

(b) explains why the authority does not accept the EIS; and

(c) states the time within which the proponent may respond to the notice, whether by providing a revised EIS or otherwise.

(3) The time stated under subsection (2) (c) must not be shorter than 20 working days.

(4) In this section:

EIS includes an EIS revised under this section.

224A Rejection of unsatisfactory EIS

(1) This section applies if the planning and land authority gives the proponent of a development proposal a second written notice (a ***second notice***) under section 224 (2).

(2) The planning and land authority must reject an EIS if—

(a) the proponent does not respond within the time stated in the second notice; or

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(b) the proponent responds within the time stated in the second notice but the authority remains unsatisfied in relation to a matter mentioned in section 222 (2) (a).

(3) If the planning and land authority rejects an EIS under subsection (2), the authority must give the proponent written reasons explaining why the EIS is rejected.

224B Cost recovery

(1) The planning and land authority may recover from a proponent of a development proposal the direct and indirect costs incurred by the authority—

(a) in engaging a consultant to assist with the collection or analysis of information relevant to the authority's assessment of matters under a relevant provision; and

(b) in preparing an assessment report under section 225A.

Note The costs may be recovered in a court of competent jurisdiction (see Legislation Act, s 177).

(2) In this section:

relevant provision means—

(a) section 212 (2) (Scoping of EIS); or

(b) section 222 (Authority consideration of EIS); or

(c) section 223 (EIS given to authority out of time); or

(d) section 224 (Chance to address unaddressed matters); or

(e) section 224A (Rejection of unsatisfactory EIS).

225 Giving EIS to Minister

(1) This section applies if the planning and land authority accepts an EIS under section 222 (2) (a).

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(2) However, this section does not apply if the planning and land authority has sent an invoice to the proponent of a development proposal for costs recoverable under section 224B and the invoice remains unpaid.

(3) The planning and land authority must give the EIS to—

(a) the Minister; and

(b) for a s 125-related EIS—the Public Health Act Minister.

Note The Minister may establish a panel to consider the EIS for the development proposal (see pt 8.3).

225A EIS assessment report

(1) If the planning and land authority accepts an EIS under section 222 (2) (a), the authority must prepare a report (an ***assessment report***) that—

(a) confirms that the authority is satisfied in relation to the matters mentioned in section 222 (2) (a); and

(b) may contain additional information about how the authority came to be satisfied in relation to those matters.

(2) An assessment report is a notifiable instrument.

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

(3) The planning and land authority must—

(a) if an EIS is given to the Minister under section 225 (3) (a)—give the assessment report to the Minister; and

(b) if a s 125-related EIS is given to the Public Health Act Minister under section 225 (3) (b)—give the assessment report to the Public Health Act Minister.

(4) The planning and land authority must put an electronic link to the assessment report on the authority website.

(5) An assessment report expires 18 months after the day it is notified.

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226 Notice of no action on EIS given to Minister

(1) This section applies if—

(a) the planning and land authority gives the Minister an EIS under section 225; and

(b) the Minister decides not to present the EIS to the Legislative Assembly under section 227; and

(c) the Minister decides not to establish an inquiry panel to inquire about the EIS.

(2) The Minister must give the planning and land authority written notice that the Minister has decided to take no action in relation to the EIS.

Note If the Minister gives notice under this section, the EIS to which the notice relates is completed (see s 209).

227 Minister may present EIS to Legislative Assembly

The Minister may, but need not, present to the Legislative Assembly an EIS given to the Minister under section 225.

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Part 8.3 Inquiry panels

228 Establishment of inquiry panels

(1) The Minister must, not later than 15 working days after the day an EIS is given to the Minister under section 225—

(a) decide whether to establish a panel (an ***inquiry panel***) to inquire about the EIS; and

(b) if the Minister decides to establish an inquiry panel—tell the planning and land authority about the decision.

Note If the Minister decides not to establish an inquiry panel and not to present the EIS to the Legislative Assembly, the Minister must give the planning and land authority written notice of the decision (see s 226).

(2) If the Minister decides to establish an inquiry panel to inquire about an EIS, the Minister may establish the panel to inquire about any or all aspects of the EIS.

(3) However, if the Public Health Act Minister gives notice, under the *Public Health Act 1997*, section 134 that a panel to conduct an inquiry about an EIS should be established, the Minister must establish an inquiry panel to inquire in relation to the effects on public health of the proposal that is the subject of the EIS.

(4) If the Minister establishes an inquiry panel to inquire about an EIS, the Minister must, in writing—

(a) prepare terms of reference for the inquiry; and

(b) give notice of the inquiry to the proponent of the development proposal to which the EIS relates.

Note The power to prepare terms of reference for the inquiry includes the power to amend or repeal the terms of reference (see Legislation Act, s 46).

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(5) The terms of reference are a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 An instrument amending or repealing the terms of reference must also be notified (see Legislation Act, s 46 (2)).

229 How does the Minister establish an inquiry panel?

(1) The Minister establishes an inquiry panel for an EIS by—

(a) appointing 1 or more people to the panel; and

(b) preparing written terms of reference for the inquiry.

(2) If the Minister appoints more than 1 person to an inquiry panel, the Minister must, in writing, nominate a person appointed to be the presiding member of the panel.

(3) However, the Minister must not appoint a person to an inquiry panel unless satisfied that the person has the expertise necessary to exercise the functions of the panel in relation to the matter inquired into.

(4) Also, the Minister must not appoint any of the following people to an inquiry panel for an EIS:

(a) the chief planning executive;

(b) a member of the planning and land authority's staff;

(c) a member of the land agency's staff;

(d) a person prescribed by regulation in relation to the EIS.

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230 Time for reporting by inquiry panels

(1) This section applies if the Minister establishes an inquiry panel to inquire about an EIS.

(2) The panel must report in writing to the Minister on the result of the inquiry not later than—

(a) 60 working days after the day the Minister establishes the panel; or

(b) if the period under paragraph (a) is extended under subsection (3)—the period under paragraph (a) as extended.

(3) The Minister may, on application by the panel, extend by written notice the period for reporting.

231 Inquiry panel findings and report to be independent

(1) The report of an inquiry panel must be the view of the inquiry panel based on the findings of the panel.

(2) To remove any doubt, the Minister must not direct an inquiry panel in relation to the findings or report of the panel.

232 Protection of people on inquiry panels from liability

(1) A person appointed to an inquiry panel is not personally liable for anything done, or omitted to be done, honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

(2) Any liability that would, apart from this section, attach to a person appointed to an inquiry panel attaches instead to the Territory.

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233 Recovery of inquiry panel costs

The direct and indirect costs to the Territory of the conduct of an inquiry about an EIS are recoverable from the proponent of the development proposal to which the EIS relates.

Example of indirect costs

the administrative overheads of staff exercising functions in relation to the inquiry

Note 1 The costs may be recovered in a court of competent jurisdiction (see Legislation Act, s 177).

Note 2 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).

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Chapter 9 Leases and licences

Notes to ch 9

Other provisions about the termination of leases and licences and recovering possession of leases are found in pt 11.6.

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

Part 9.1 Definitions and application—ch 9

234 Definitions—ch 9

In this chapter:

building and development provision, in relation to a lease, means a provision of the lease that requires the lessee to carry out stated works on the land comprised in the lease or on unleased territory land.

consolidation means the surrender of 2 or more leases held by the same lessee and the grant of a new lease or leases to the lessee to consolidate the parcels of land comprised in the surrendered leases.

deal with a lease, means—

(a) assign or transfer the lease; or

(b) sublet the land comprised in the lease or part of it; or

(c) part with possession of the land comprised in the lease or any part of it.

lessee means the person who is the proprietor of a lease, whether or not the person is the registered proprietor of the lease, and regardless of how the person became the proprietor of the lease.

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market value, of a lease, means the amount that could be expected to be paid for the lease on the open market if it were sold by a willing but not anxious seller to a willing but not anxious buyer.

provision, of a lease, includes a provision incorporated in the lease by reference and any other provision to which the lease is subject.

registered lease means a lease registered in the register kept under the *Land Titles Act 1925.*

registered proprietor, in relation to a lease, means the person who is registered under the *Land Titles Act 1925* as proprietor of the lease.

rental lease means a lease for rent that is more than a nominal rent.

residential lease means a lease that authorises only residential use of the land comprised in the lease.

rural lease means a lease granted for rural purposes or purposes including rural purposes.

single dwelling house lease means a lease granted under section 240 (1) (e).

subdivision—

(a) means the surrender of 1 or more leases held by the same lessee, and the grant of new leases to the lessee to subdivide the parcels of land in the surrendered leases; but

(b) does not include the subdivision of land under the *Unit Titles Act 2001*.

sublease means a sublease of—

(a) a parcel of land, or part of a parcel of land, subject to a lease; or

(b) a building, or part of a building, on a parcel of land subject to a lease.

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sublessee means the person who is the proprietor of a sublease, regardless of how the person became the proprietor of the sublease.

235 Meaning of *lease*—Act

In this Act:

lease means a lease (other than a sublease) of territory land—

(a) granted under this Act; or

(b) granted or arising under the *Unit Titles Act 2001*.

Note Some leases are taken to have been granted under this Act and so come within this definition of ***lease*** (see s 456).

235A Meaning of *concessional lease*—Act

(1) In this Act:

concessional lease—

(a) means a lease—

(i) granted for a consideration less than the full market value of the lease, whether paid as a lump sum or payable as rent, or for no consideration; and

(ii) for a lease granted before 31 March 2008—in relation to which neither of the following payments has been made:

(A) an amount in relation to the grant of the lease that is equal to the lease's market value at the time of payment or, if the amount is paid in parts, at the time of the last payment;

(B) an amount to reduce the rent payable under the lease to a nominal rent under the *Land (Planning and Environment) Act 1991*, section 186 (Variation of lease to pay out rent); and

Note ***Made***—see s (4).

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(b) includes the following leases:

(i) a consolidated or subdivided concessional lease;

(ii) a further concessional lease;

(iii) a regranted concessional lease.

Note 1 A lease that is granted as a concessional lease must include a statement that the lease is concessional (see s 238 (2) (a)).

Note 2 The concessional status of a concessional lease may only be removed by a variation of the lease (see div 9.4.2).

Note 3 A consolidated or subdivided lease or further or regranted lease, other than a lease mentioned in par (b), is a market value lease (see sch 5, pt 5.2, item 1).

Note 4 A person may rely on a statement in a lease that the lease is concessional (see s 259C).

(2) However, a lease is not a concessional lease if the lease is a market value lease.

(3) A lease is not concessional only because the lease—

(a) was granted under the *Leases (Special Purposes) Act 1925*; and

(b) was granted before 1 January 1971; and

(c) is a lease to which the *Leases (Special Purposes) Act 1925*, section 5AB (Rent) applies.

(4) In this section:

consolidated or subdivided concessional lease means a lease granted during a consolidation or subdivision involving the surrender of 1 or more previous leases if 1 or more of the previous leases was a concessional lease.

further concessional lease means a further lease if the surrendered lease was a concessional lease.

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made—a payment has been ***made*** if the relevant amount—

(a) was paid to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease; or

(b) was waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount was waived and the rest of the amount was paid.

regranted concessional lease means a regranted lease (whether the regrant is on the same or different conditions) if the surrendered lease was a concessional lease.

235B Meaning of *market value lease*—Act

In this Act:

market value lease—

(a) means a lease other than a lease that—

(i) states, in the lease or a memorial to the lease, that the lease is concessional; or

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

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).

(ii) is possibly concessional; and

(b) includes a lease mentioned in schedule 5, part 5.2.

235C Meaning of *possibly concessional*—Act

(1) For this Act, a lease is ***possibly concessional*** if the lease—

(a) was granted—

(i) before 31 March 2008; or

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(ii) after 30 March 2008 and before the commencement of this section under the *Land (Planning and Environment) Act 1991*; and

Note A lease may be granted under the *Land (Planning and Environment) Act 1991* after 30 March 2008 in some circumstances (see s 458 and s 459A).

(b) does not include a statement, in the lease or a memorial to the lease—

(i) that the lease is a concessional lease; or

(ii) to the effect that the lease is a market value lease; and

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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).

(c) is mentioned in schedule 5, part 5.3.

(2) However, a lease is not ***possibly concessional*** if the lease is also mentioned in schedule 5, part 5.2.

Note A lease mentioned in sch 5, pt 5.2 is a market value lease (see s 235B).

(3) Schedule 5, part 5.3, item 12 and this subsection expire 3 years after this subsection commences.

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Part 9.2 Grants of leases generally

236 Effect subject to pt 9.7

This part has effect subject to part 9.7 (Rural leases).

237 Authority may grant leases

The planning and land authority is authorised to grant, on behalf of the Executive, leases that the Executive may grant on behalf of the Commonwealth.

Note 1 ***Lease***—see s 235.

Note 2 For power to delegate this function, see s 20 (2).

238 Granting leases

(1) The planning and land authority may grant a lease by—

(a) auction; or

(b) tender; or

(c) ballot; or

(d) direct sale.

Note 1 Not everyone may be eligible to be granted a lease under this subsection (see s 239).

Note 2 Section 240, s 241, s 242 and s 243 also apply to grants under par (d).

(2) A lease granted under this section must include—

(a) a statement—

(i) if the lease is a concessional lease—that the lease is concessional; or

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(ii) if the lease is not concessional—to the effect that the lease is a market value lease; and

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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).

(b) for a land rent lease—a statement that the lease is a land rent lease.

Note A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see *Land Titles Act 1925*, s 17 (2)).

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

(a) requiring the lessee to develop the land comprised in the lease, or any unleased territory land, in a stated way; or

(b) requiring the lessee to give security for the performance of any of the lessee's obligations under the lease.

238A Lease conditional on approval for stated development

(1) This section applies to a lease granted under section 238 if—

(a) a provision of the lease requires the lessee to obtain the approval of the planning and land authority to undertake development on the land comprised in the lease; and

(b) the development is exempt development.

(2) The lessee does not require the planning and land authority's approval for the development.

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239 Eligibility for grant of lease

The planning and land authority may restrict the people eligible for the grant of a lease under section 238 by stating, in the relevant notice of auction, tender, ballot or direct sale, that a class of people is eligible or ineligible for the grant of a lease under the auction, tender, ballot or direct sale.

240 Restriction on direct sale by authority

(1) The planning and land authority must not grant a lease under section 238 (1) (d) unless—

(a) for a lease prescribed by regulation for this paragraph—

(i) the grant is in accordance with criteria prescribed by regulation for this paragraph; and

(ii) the Executive approves the grant; or

(b) for a lease prescribed by regulation for this paragraph—

(i) the grant is in accordance with criteria prescribed by regulation for this paragraph; and

(ii) the Minister approves the grant; or

(c) the Executive approves the grant under subsection (2); or

(d) the lease is prescribed by regulation; or

(e) the grant is of a residential lease for a single dwelling house; or

(f) the grant is to give effect to a lease variation (whether by consolidation, subdivision or otherwise); or

(g) the grant is in accordance with—

(i) section 241 (Direct sale if single person in restricted class); or

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(ii) section 254 (Grant of further leases).

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

(2) The Executive may approve the grant by direct sale of a lease other than in accordance with criteria prescribed if satisfied that—

(a) the grant meets 1 or more of the grant objectives; and

(b) a grant by a means other than direct sale—

(i) is not likely to meet any of the grant objectives; or

(ii) may meet 1 or more of the grant objectives but is unlikely to meet the objective to the same extent as the grant by direct sale of the lease.

(3) The validity of a lease granted under section 238 (1) (d) is not taken to be affected by a failure to comply with the criteria prescribed by regulation for this section.

(4) In this section:

grant objective—each of the following is a ***grant objective***:

(a) to benefit the economy of the ACT or region;

(b) to contribute to the environment, or social or cultural features in the ACT;

(c) to introduce new skills, technology or services in the ACT;

(d) to contribute to the export earnings and import replacement of the ACT or region;

(e) to facilitate the achievement of a major policy objective.

single dwelling house—see the territory plan.

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241 Direct sale if single person in restricted class

(1) This section applies if—

(a) under section 239 (Eligibility for grant of lease by auction, tender or ballot), the planning and land authority restricts the people eligible to apply for a lease; and

(b) only 1 person is eligible for the grant of the lease.

(2) The planning and land authority may grant the lease to the person under section 238 (1) (d) without auctioning the lease, calling for tenders or holding a ballot.

242 Notice of direct sale

(1) The planning and land authority must, not later than 5 working days after the end of a quarter, give the Minister—

(a) a statement of—

(i) the number of single dwelling house leases granted during the quarter; and

(ii) any other information prescribed by regulation for single dwelling house leases; and

(b) a statement that sets out the prescribed information for each other direct sale lease granted during the quarter; and

(c) a copy of each other direct sale lease granted during the quarter.

(2) The Minister must present the documents given under subsection (1) to the Legislative Assembly not later than 5 sitting days after the day the Minister receives the information.

(3) To remove any doubt, the validity of a single dwelling house lease or other direct sale lease is not affected by a failure to comply with subsection (1) or (2) in relation to the lease.

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(4) In this section:

other direct sale lease means a lease granted by direct sale, other than a single dwelling house lease.

Note ***Single dwelling house lease***—see s 234.

prescribed information, for an other direct sale lease, means—

(a) the amount (if any) paid for the grant of the lease; and

(b) if the lease was granted with the approval of the Executive under section 240 (2)—the reason for granting the lease with the approval of the Executive.

243 Direct sale leases subject to agreed provisions

A lease granted under section 238 (1) (d) must be granted subject to the provisions that are agreed between the planning and land authority and the applicant for the lease.

244 Authority need not grant lease

(1) The planning and land authority need not grant a lease to an applicant, even if applications for the lease have been invited.

(2) If applications for a lease have been invited subject to conditions, the planning and land authority may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

245 Planning report before granting leases

(1) The planning and land authority may, but need not, prepare a planning report in relation to a proposal to grant a lease.

(2) The planning and land authority must prepare a planning report in relation to a proposal to grant a lease if directed in writing to do so by the Minister.

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246 Payment for leases

(1) The planning and land authority must not grant a lease other than for payment of an amount that is not less than the market value of the lease.

Note ***Lease***—see s 235.

(2) However, subsection (1) does not apply in relation to—

(a) a rental lease granted for not less than the market rental value of the lease; or

Note ***Rental lease***—see s 234.

(b) a land rent lease; or

(c) a lease mentioned in section 246A (Payment for adjoining concessional leases); or

(d) a further lease granted under section 254 (Grant of further leases); or

(e) a lease mentioned in section 461A (Payment for leases to community organisations); or

(f) the grant of a lease prescribed by regulation for which the amount prescribed by regulation has been paid.

(3) To remove any doubt, an entity pays an amount that is not less than the market value of a lease if—

(a) the entity pays less than the market value of the lease (the ***monetary component***); and

(b) the entity provides another component (a ***non-monetary component***) comprising—

(i) infrastructure, or other work, in relation to the lease or another lease; or

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(ii) 1 or more of the following under a deed or agreement with the Territory or a Territory authority:

(A) goods;

(B) services;

(C) works; and

(c) the total value of the monetary component and the non-monetary component is not less than the market value of the lease.

(4) To remove any doubt, for a lease prescribed for subsection (2) (f), an entity pays the amount prescribed by regulation for the lease if—

(a) the entity pays less than the amount prescribed for the lease (the ***monetary component***); and

(b) the entity provides another component (a ***non-monetary component***) comprising—

(i) infrastructure, or other work, in relation to the lease or another lease; or

(ii) 1 or more of the following under a deed or agreement with the Territory or a Territory authority:

(A) goods;

(B) services;

(C) works; and

(c) the total value of the monetary component and the non-monetary component is not less than the amount prescribed for the lease.

(5) The validity of a lease granted by the planning and land authority is not affected by a failure to comply with this section.

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246A Payment for adjoining concessional leases

(1) This section applies if—

(a) a person applies for the grant of a lease (a ***new lease***) (whether before or after 31 March 2008); and

(b) the new lease adjoins another lease (an ***original lease***) granted to the person; and

(c) the original lease is a concessional lease.

(2) The planning and land authority may grant the new lease on payment of an amount worked out in the way the amount payable for the original lease was worked out.

(3) If the amount payable for the original lease was worked out under the repealed Act, the repealed Act applies to working out the amount payable for the new lease as if the repealed Act had not been repealed.

(4) In this section:

repealed Act means the *Land (Planning and Environment) Act 1991*.

247 Use of land for leased purpose

(1) Territory land, or a building or structure on the land, in relation to which a lease has been granted, whether before or after the commencement of this part, must not be used for a purpose other than a purpose authorised by the lease.

Note Beginning a use of land, or a building or structure on the land, is development and may require development approval (see s 7, def ***development***, par (d) and s 8, def ***use***, par (a)).

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(2) However, if the lease is a residential lease, the land may also be used for home business.

Note While the use of a residential lease for a home business is authorised, the use of the land for a home business is not exempt from requiring development approval unless the use is an exempt development (see div 7.2.6).

(3) In this section:

home business, carried on on land subject to a residential lease, means a profession, trade or other occupation carried on by a resident of the land.

248 Access to leased land from roads and road related areas

(1) The planning and land authority must not grant a lease unless satisfied that, during the term of the lease, the lessee will have—

(a) direct access to the leased land from a road or road related area; or

(b) access to the leased land from a road or road related area by way of an access road or track, or in another way, that the lessee may use for entry or exit only, without charge and at any hour of the day or night.

(2) Access provided by the planning and land authority because of subsection (1) (b)—

(a) must not interfere with a building, garden or stockyard on the land (the ***affected land***) through which the access is provided at the time the access is provided; and

(b) must be located in a way that causes as little damage or inconvenience to the lessee of the affected land as possible.

(3) The validity of a lease granted under this part is not affected by a failure to comply with this section.

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(4) In this section:

road—see the *Road Transport (General) Act 1999*, dictionary.

road related area—see the *Road Transport (General) Act 1999*, dictionary.

249 No right to use, flow and control of water

A lease or further lease granted under this chapter does not give a right to the use, flow and control of water (including water containing impurities) under the land comprised in the lease.

Note This section does not apply in relation to leases or further leases granted before 11 December 1998 (see s 455).

250 Failure to accept and execute lease

(1) This section applies if, not later than the end of the period prescribed by regulation, a person who is entitled to the grant of a lease under this chapter fails to—

(a) accept and execute the lease; or

(b) pay any amount the person is required to pay before being granted the lease.

(2) The planning and land authority may, by written notice given to the person, end the person's right to be granted the lease.

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

(3) The notice under subsection (2) must—

(a) state the ground on which it is given; and

(b) state that it takes effect on the day 20 working days after the day it is given.

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(4) If the planning and land authority does not know the home address of the person to whom the notice under subsection (2) is to be given, the authority may give the person the notice by publishing the notice in a daily newspaper.

(5) A notice given under subsection (2) takes effect on the day 20 working days after the day it is given.

(6) A person whose right to be granted a lease has been ended under this section does not have any claim for compensation in relation to the ending of the right or for the recovery of any money paid to the planning and land authority in relation to the grant of the lease.

251 Restrictions on dealings with certain leases

(1) This section applies in relation to the following leases:

(a) a lease that provides that the lessee cannot deal with the land, or part of the land, comprised in the lease without the prior written consent of the planning and land authority;

(b) a lease granted under section 238 (1) by auction, tender or ballot, if the class of people eligible or ineligible for the grant was restricted under section 239;

(c) a lease granted under section 238 (1) (d), other than—

(i) a lease granted to the Territory; or

(ii) a single dwelling house lease, other than a single dwelling house lease prescribed by regulation; or

(iii) a lease—

(A) that was offered for sale under section 238 (1) (a) or (c) but not sold; and

(B) for which not less than the market value was paid for the subsequent direct sale; or

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(iv) a lease—

(A) that was sold under section 238 (1) (c) but the contract of sale was rescinded or otherwise ended before the lease was granted under the contract; and

(B) for which not less than the market value was paid for the subsequent direct sale;

(d) a lease prescribed by regulation.

Note 1 This section has extended application (see s 450 and s 451).

Note 2 Dealings with concessional leases and rural leases, which are not restricted by this section, are restricted under s 265 and s 284.

(2) This section does not apply in relation to the following leases:

(a) a concessional lease;

(b) a rural lease.

(3) If this section applies to a lease, the planning and land authority must tell the registrar-general that it applies.

Note If the planning and land authority tells the registrar-general that this section applies to a lease, the registrar-general must include a memorial in the register to that effect (see *Land Titles Act 1925*, s 72D).

(4) If a memorial stating that this section applies to the lease is included in the register under the *Land Titles Act 1925*, the lessee, or anyone else with an interest in the lease, must not, during the restricted period for the lease, deal with the lease without the written consent of the planning and land authority under section 252.

Note ***Memorial***—see the *Land Titles Act 1925*, dictionary.

(5) However, a regulation may exempt a lease from this section, whether generally or in relation to a particular dealing.

(6) A dealing in relation to a lease to which this section applies that is made or entered into without consent has no effect.

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(7) However, subsection (6) does not apply to a dealing registered under the *Land Titles Act 1925*.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

(8) In this section:

deal, with a lease, does not include sublet the lease.

restricted period, for a lease to which this section applies, means—

(a) for a lease that provides that the lessee cannot deal with the land, or part of the land, comprised in the lease without the prior written consent of the planning and land authority—the period stated in the lease or, if no period is stated, the term of the lease; or

(b) for a lease granted under section 238 (1) by auction, tender or ballot, if the class of people eligible or ineligible for the grant was restricted under section 239—5 years after the day the lease was granted; or

(c) for a lease granted under section 238 (1) (d)—the period ending 5 years after the day the lease was granted; or

(d) for a lease prescribed by regulation—

(i) the period prescribed by regulation for the lease; or

(ii) if no period is prescribed—the term of the lease.

252 Consent to s 251 dealings

(1) The planning and land authority must not consent to a dealing under section 251 in relation to a lease unless—

(a) satisfied that the person to whom it is proposed that the lease should be assigned or transferred or the person to whom it is proposed that possession of the land should be given, is a person who satisfies the criteria prescribed under section 240

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in relation to the class of leases in which the lease is included; or

(b) if the lease was originally granted by restricted auction, tender or ballot—satisfied that the person to whom it is proposed that the lease should be assigned or transferred or the person to whom it is proposed that possession of the land should be given, is a person who could have been granted the original lease.

(2) The validity of a dealing made or entered into with the consent of the planning and land authority is not affected—

(a) by a defect or irregularity in relation to the giving of the consent; or

(b) because a ground, or all grounds, for the consent had not arisen.

253 Leases held by Territory not to be transferred or assigned

(1) The Territory must not transfer or assign a lease if the Territory is the registered proprietor of the lease.

(2) To remove any doubt, subsection (1) does not prevent the Territory from subletting a lease if the Territory is the registered proprietor of the lease.

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Part 9.3 Grants of further leases

254 Grant of further leases

(1) This section applies if—

(a) a person (the ***lessee***) who is or was the holder of a lease (the ***old lease***) of land applies to the planning and land authority for the grant of a further lease of the land; and

(b) neither the Territory nor the Commonwealth needs the land for a public purpose; and

(c) either—

(i) before expiry of the old lease, the lessee surrenders the old lease; or

(ii) the old lease expired not more than 6 months before the application for the grant of a further lease; and

(d) if the old lease is not a residential lease—all rent due under the old lease is paid; and

(e) if the further lease is a rural lease—

(i) if the further lease is a rental lease—the amount of rent determined under section 280 is payable under the further lease; or

(ii) in any other case—

(A) the amount determined under section 280 for the grant of the further lease is paid; or

(B) if the determination under section 280 for the grant of the further lease provides for the payment of the amount by instalments—any instalment required, under the determination, to be paid before the further lease is granted is paid; and

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(f) the criteria (if any) prescribed by regulation are satisfied.

(2) The planning and land authority must grant the lessee a further lease of the land for a term not longer than—

(a) 99 years; or

(b) for a rural lease for which a period shorter than 99 years is determined under section 281—the shorter period.

(3) A further lease granted under this section must include a statement—

(a) if the lease is a concessional lease—that the lease is concessional; or

(b) if the lease is not concessional—to the effect that the lease is a market value lease.

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

Note 1 A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see that Act, s 17 (2)).

Note 2 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) A further lease begins on the day after—

(a) the day the old lease is surrendered; or

(b) for a further lease granted on application after the expiry of the old lease—the day after the old lease expires.

(5) If the term of a further lease granted under subsection (2) is not longer than the term of the old lease, any fee payable under subsection (2) for the grant of the further lease must not be more than the cost of granting the further lease.

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255 Grant of further lease includes authorised use

(1) This section applies if a further lease is granted under this part on the surrender of an existing lease.

(2) The further lease must authorise each use of the leased land, and any building or structure on the land, that the lease surrendered authorised.

(3) However, this section does not apply if a change of use of land, or a building or structure on the land, that involves a lease variation is applied for at the same time as the grant of the further lease is applied for.

(4) To remove any doubt, a further lease may include provisions that are different from the lease that it is replacing.

Example

A further lease includes a restriction on the number of dwellings that may be built on the lease. The lease the further lease is replacing did not include a similar provision.

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).

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Part 9.4 Concessional leases

Division 9.4.1 Deciding whether leases concessional

256 Application for decision about whether lease concessional

A lessee may apply to the planning and land authority for a decision about whether the lease is a concessional lease.

257 Decision about whether lease concessional

(1) On application under section 256, the planning and land authority must decide whether the lease is concessional.

(2) However, if someone (other than the lessee) has a registered interest in the lease, the planning and land authority must not make a decision under subsection (1) unless the authority has—

(a) given written notice (the ***application notice***) of the application to the person; and

(b) in the application notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and

(c) considered any representations made in the time given in the application notice.

(3) If the planning and land authority is not satisfied that the lease is a concessional lease, the authority must decide that the lease is not concessional, in which case the lease is taken to be a market value lease.

(4) However, the planning and land authority is taken to have decided (the ***deemed decision***) that the lease is a concessional lease if the

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authority has not made a decision on the application at the end of the period of 15 working days after—

(a) the day the application is made; or

(b) if someone (other than the lessee) has a registered interest in the lease—the day the period for making representations given in the application notice ends.

Note 1 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

Note 2 The time for making an application for review of a deemed decision is 20 working days after the end of the 20 working-day period mentioned in s (5) (see s 409A).

(5) If the planning and land authority is taken to have decided that a lease is a concessional lease under subsection (4), the authority may, within 20 working days after the deemed decision is taken to have been made, decide that the lease is a market value lease under subsection (1) despite the deemed decision.

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority will not be able to decide that the lease is a market value lease if the ACAT has decided an application for review of the deemed decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

(6) The planning and land authority must give written notice of the decision under subsection (1) to the applicant and anyone else with a registered interest in the lease to which the decision relates.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

(7) The *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) does not apply to this section.

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258 Authority may decide whether lease concessional on own initiative

(1) The planning and land authority may, on its own initiative, decide whether a lease is concessional.

(2) However, the planning and land authority must not make a decision under subsection (1) unless the authority has—

(a) given written notice (the ***lease decision notice***) of the authority's intention to make a decision under subsection (1) to each person with a registered interest in the lease; and

(b) in the lease decision notice, invited the person to give written representations about the proposed decision to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and

(c) considered any representations made in the time given in the lease decision notice.

(3) If the planning and land authority is not satisfied that the lease is a concessional lease, the authority must decide that the lease is not concessional, in which case the lease is taken to be a market value lease.

(4) Also, if the planning and land authority gives a lease decision notice in relation to a lease, the authority must make a decision under subsection (1) in relation to the lease not later than 15 working days after the day the period for making representations given in the lease decision notice ends.

(5) The planning and land authority must give written notice of the decision under subsection (1) to each person with a registered interest in the lease to which the decision relates.

Note 1 If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

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Note 2 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

258A Application for decision about whether certain leases are concessional

(1) This section applies to a lease if—

(a) the lease was granted before 31 March 2008; and

(b) the lease does not state in the lease that the lease is a concessional lease; and

(c) the planning and land authority made a decision (the ***original decision***), whether before or after 31 March 2008, that the lease is a concessional lease; and

(d) the original decision is stated in a memorial to the lease.

Note ***Memorial***—see the *Land Titles Act 1925*, dictionary.

(2) The lessee of the lease may apply to the planning and land authority for a decision about whether the lease is a concessional lease.

258B Making other decisions about concessional status of certain leases

(1) On application by the lessee under section 258A, the planning and land authority may decide whether the lease is a concessional lease.

(2) However, the planning and land authority must not make a decision under subsection (1) unless—

(a) the authority is satisfied that—

(i) there is additional relevant information about the concessional status of the lease; or

(ii) there is information to indicate that the authority made a formal error when it made the original decision; and

Note ***Formal error***—see the dictionary.

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(b) if someone (other than the lessee) has a registered interest in the lease, the authority has—

(i) given written notice (the ***application notice***) of the application to the person; and

(ii) in the application notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the day the notice is given to the person; and

(iii) considered any representations made in the time given in the application notice.

(3) If the planning and land authority is not satisfied that the lease is a concessional lease, the authority must decide that the lease is not concessional, in which case the lease is taken to be a market value lease.

(4) However, the planning and land authority is taken to have decided (the ***deemed decision***) that the lease is a concessional lease if the authority has not made a decision on the application at the end of the period of 15 working days after—

(a) the day the application is made; or

(b) if someone (other than the lessee) has a registered interest in the lease—the day the period for making representations given in the application notice ends.

Note 1 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

Note 2 The time for making an application for review of a deemed decision is 20 working days after the end of the 20 working-day period mentioned in s (5) (see s 409A).

(5) If the planning and land authority is taken to have decided that a lease is a concessional lease under subsection (4), the authority may, within 20 working days after the day the deemed decision is taken to

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have been made, decide that the lease is a market value lease despite the deemed decision.

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority will not be able to decide that the lease is a market value lease if the ACAT has decided an application for review of the deemed decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

(6) The planning and land authority must give written notice of the decision under subsection (1) to the applicant and anyone else with a registered interest in the lease to which the decision relates.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

(7) The *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) does not apply to this section.

(8) In this section:

original decision—see section 258A (1) (c).

258C Authority may make another decision about whether certain leases concessional on own initiative

(1) This section applies to a lease if—

(a) the lease was granted before 31 March 2008; and

(b) the lease does not state in the lease that the lease is a concessional lease; and

(c) the planning and land authority made a decision (the ***original decision***) that the lease is concessional, whether before or after 31 March 2008; and

(d) the decision is stated in a memorial to the lease.

Note ***Memorial***—see the *Land Titles Act 1925*, dictionary.

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(2) The planning and land authority may, on its own initiative, decide whether the lease is a concessional lease.

(3) However, the planning and land authority must not make a decision under subsection (2) unless—

(a) the authority is satisfied that—

(i) there is additional relevant information about the concessional status of the lease; or

(ii) there is information to indicate that the authority made a formal error when it made the original decision; and

Note ***Formal error***—see the dictionary.

(b) the authority has—

(i) given written notice (the ***lease decision notice***) of the authority's intention to make a decision under subsection (2) to each person with a registered interest in the lease; and

(ii) in the lease decision notice, invited the person to give written representations about the proposed decision to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the day the notice is given to the person; and

(iii) considered any representations made in the time given in the lease decision notice.

(4) If the planning and land authority is not satisfied that the lease is a concessional lease, the authority must decide that the lease is not concessional, in which case the lease is taken to be a market value lease.

(5) Also, if the planning and land authority gives a lease decision notice in relation to a lease, the authority must make a decision under subsection (2) in relation to the lease not later than 15 working days

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after the day the period for making representations given in the lease decision notice ends.

(6) The planning and land authority must give written notice of the decision under subsection (2) to each person with a registered interest in the lease to which the decision relates.

Note 1 If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

Note 2 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

259 Lodging notice of decision about concessional status of lease

(1) This section applies if—

(a) the planning and land authority makes a decision that a lease is a concessional lease or not; and

(b) for a decision that the lease is a concessional lease—either—

(i) no application is made to the ACAT for review of the decision within the time allowed for applications; or

(ii) an application for review of the decision is made and the ACAT—

(A) confirms, varies or substitutes the decision; or

(B) remits the matter for reconsideration by the planning and land authority and the authority decides that the lease is a concessional lease or not.

Note The planning and land authority may decide whether a lease is a concessional lease or market value lease under s 257, s 258, s 258B or s 258C.

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(2) The planning and land authority must lodge notice with the registrar-general for registration under the *Land Titles Act 1925* that—

(a) if the planning and land authority decides that the lease is a concessional lease—the lease is concessional; or

(b) if the planning and land authority decides that the lease is not concessional—the lease is a market value lease.

Note The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

259A Lodging notice of deemed decision about concessional status of lease

(1) This section applies if—

(a) the planning and land authority is taken to have made a decision that a lease is concessional under section 257 (4) or section 258B (4); and

(b) the 20 working-day period mentioned in section 257 (5) or section 258B (5) for the decision has ended; and

(c) either—

(i) no application is made to the ACAT for review of the decision that the lease is a concessional lease within the time allowed for applications; or

(ii) an application for review of the decision is made and the ACAT—

(A) confirms, varies or substitutes the decision; or

(B) remits the matter for reconsideration by the planning and land authority and the authority decides that the lease is a concessional lease or not.

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(2) The planning and land authority must lodge notice with the registrar-general for registration under the *Land Titles Act 1925* that—

(a) if the planning and land authority decides that the lease is a concessional lease—the lease is concessional; or

(b) if the planning and land authority decides that the lease is not concessional—the lease is a market value lease.

Note The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

259B Non-concessional status of leases

(1) This section applies to a lease if—

(a) the lease includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease; or

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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).

(b) the planning and land authority has lodged a notice that the lease is a market value lease with the registrar-general for registration under the *Land Titles Act 1925*.

(2) A person may rely on the statement and deal with the lease as a market value lease.

(3) The planning and land authority must not make a decision that would change the lease's status as a market value lease.

(4) This section is subject to an order of a court or tribunal.

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259C Concessional status of leases

(1) This section applies to a lease if—

(a) the lease states, in the lease or a memorial to the lease, that the lease is a concessional lease; or

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

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).

(b) the planning and land authority has lodged a notice that the lease is a concessional lease with the registrar-general for registration under the *Land Titles Act 1925*.

(2) A person may rely on the statement and deal with the lease as a concessional lease.

(3) The planning and land authority must not make a decision that would change the lease's status as a concessional lease.

(4) This section is subject to—

(a) a decision about whether a lease is a concessional lease under section 258B or section 258C; or

(b) a variation of the lease to remove the concessional status of the lease under division 9.4.2; or

(c) an order of a court or tribunal.

259D Concessional status guidelines

(1) The planning and land authority may make guidelines (the ***concessional lease guidelines***) setting out information to assist people to decide whether a lease is a concessional lease, market value lease or possibly concessional.

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(2) A person who is deciding whether a lease is a concessional lease, market value lease or possibly concessional may have regard to the concessional lease guidelines but is not bound by the guidelines.

(3) A concessional lease guideline is a notifiable instrument.

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

Division 9.4.2 Varying concessional leases to remove concessional status

260 Application—div 9.4.2

This division applies to an application for development approval to vary a lease granted as a concessional lease if the application is for or includes the removal of its concessional status.

Example of varying lease to remove concessional status

surrender of the concessional lease and regrant of a lease for market value

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).

260A Removal of concessional status by variation of lease

(1) The concessional status of a lease may only be removed by a variation of the lease.

(2) This section does not apply to a decision under section 258B or section 258C.

Example

surrender of a concessional lease and regrant of a new market value lease

Note 1 A variation of a lease is a development (see s 7).

Note 2 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).

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261 No decision on application unless consideration in public interest

(1) The planning and land authority, or Minister, must not decide a development application to which this part applies under section 162 (Deciding development applications) unless the Minister decides whether it is in the public interest to consider the application.

(2) In deciding whether it is in the public interest to consider the development application, the Minister must consider the following:

(a) whether the Territory wishes to continue to monitor the use and operation of the lease by requiring consent before the lease is dealt with;

(b) whether approving the application would cause any disadvantage to the community taking into account potential uses of the leased land that are consistent with the territory plan, whether or not those uses are authorised by the lease;

(c) whether the application to vary the lease to make it a market value lease is, or is likely to be, part of a larger development and, if so, what that development will involve;

(d) whether the Territory should buy back, or otherwise acquire, the lease;

(e) whether the Territory wishes to encourage the continued use of the land for an authorised use under the lease by retaining the concessional status of the lease.

Note The Minister must consider the material required under s 139 (2) (l).

(3) The Minister must give notice of the decision to the planning and land authority.

(4) The decision is a notifiable instrument.

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

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262 Development approval of application about concessional lease subject to condition

(1) If the planning and land authority or Minister approves a development application to vary a lease granted as a concessional lease, the approval is subject to the condition that the lessee pays the Territory or a territory entity the payout amount worked out under section 263.

Note 1 The ways a lease may be varied to change its concessional status include by surrender and regrant (see s 260, example).

Note 2 For approval of development applications—see s 162.

(2) A payout amount is taken to be paid to the Territory or a territory entity if the amount is waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount is waived and the rest of the amount is paid.

263 Working out amount payable to discharge concessional leases

(1) This section applies if a development application in relation to a lease is subject to the condition that the lessee pays the Territory or a territory entity the payout amount worked out under this section.

(2) The payout amount for the lease is the amount worked out as follows:

$$\mathrm{MV} - \left(\frac{\mathrm{AP}}{\mathrm{OV}} \times \mathrm{MV} \right)$$

Note If the variation of the lease is not solely for the purpose of removing the lease's concessional status, a person may also be required to pay a lease variation charge under div 9.6.3.

(3) In this section:

AP, for a lease, means the amount (if any) paid for the lease at grant.

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MV, for a lease, means the market value of the lease if it were a market value lease.

OV, for a lease, means the market value of the lease at grant if it had been a market value lease.

(4) To remove any doubt, an amount paid as rent under a lease is not an amount paid for the lease.

264 Uses under leases varied by surrender and regrant to remove concessional status

(1) This section applies to a lease varied only to remove the concessional status of the lease by surrender and regrant of the lease.

(2) The regranted lease authorises each use of the land, and any building or structure on the land, authorised under the lease before the lease was varied to remove its concessional status.

(3) To remove any doubt—

(a) this section does not apply if the lease is varied other than to remove the concessional status of the lease; and

(b) subsection (2) applies despite anything to the contrary in the territory plan.

Division 9.4.3 Restrictions on dealings with concessional leases

265 Restrictions on dealings with concessional leases

(1) The lessee, or anyone else with an interest in a concessional lease, must not, during the term of the lease, deal with the lease without the written consent of the planning and land authority.

(2) A dealing in relation to a lease to which this section applies that is made or entered into without consent has no effect.

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(3) However, subsection (2) does not apply to a dealing registered under the *Land Titles Act 1925*.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

266 Consent to s 265 dealings

(1) The planning and land authority must not consent to a dealing under section 265 in relation to a lease unless—

(a) satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given, is a person (an ***eligible person***) who could be granted the concessional lease; or

(b) for a dealing that is a subletting—satisfied that the lessee, or an eligible person, continues to be the main user of the lease.

Examples of lessee continuing to be main user

1 A community hospital (the ***lessee***) with a concessional lease proposes to sublet an area within the hospital for a coffee shop. The lessee continues to operate the hospital, which is the majority of the site and offers most of the services being provided from the site. The sublease is likely to be allowed because it is a complementary proposed use of the sublet area.

2 A community group has subleased part of a lease to a commercial enterprise and the remainder of the lease to an eligible person. The sublease to the commercial enterprise is likely to be allowed as long as the eligible person is the main user of the lease.

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) In deciding whether the lessee proposing to sublet the lease, or an eligible person, continues to be the main user of the lease, the planning and land authority must consider the following:

(a) the proposed area of the sublease;

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(b) the extent to which the lessee or eligible person continues to provide most of the goods, services or both to be provided from the area leased;

(c) the extent to which the use of the area proposed to be subleased will be ancillary to the permitted uses of the area that is not proposed to be subleased;

(d) the extent to which the use of the area proposed to be subleased will be complementary to the use of the area that is not proposed to be subleased.

(3) The validity of a dealing made or entered into with the consent of the planning and land authority is not affected—

(a) by a defect or irregularity in relation to the giving of the consent; or

(b) because a ground, or all grounds, for the consent had not arisen.

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Part 9.5 Rent variations and relief from provisions of leases

266A Application to land rent—pt 9.5

This part does not apply to a variation of land rent in accordance with the provisions of a land rent lease.

267 Variations of rent

(1) If the rent payable under a lease is varied in accordance with the provisions of the lease, the planning and land authority must give the lessee written notice of the variation.

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

(2) A variation of rent mentioned in a notice under subsection (1) comes into operation on—

(a) the day 20 working days after the day the notice is given; or

(b) if the lease under which the variation is made provides that the variation comes into operation on a later day—the later day.

268 Review of variations of rent

(1) This section applies if—

(a) the rent payable under a lease is varied in accordance with the provisions of the lease; and

(b) the lease does not provide for the submission to arbitration of differences between the parties to the lease about variation of the rent.

(2) The lessee may, not later than 20 working days after receiving the notice under section 267 (1) about the variation, ask the planning and land authority in writing to review the variation.

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(3) The making of the request does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.

(4) If the request is made in relation to a variation, the planning and land authority must review the variation and may—

(a) confirm the variation; or

(b) set the variation aside and substitute any other variation the authority considers appropriate.

269 Reduction of rent and relief from provisions of lease

(1) The planning and land authority may approve—

(a) a reduction of the rent payable under a lease, or of the amount payable, in relation to any occupation of territory land; or

(b) the grant of relief, to a lessee or occupier of territory land, from compliance, completely or partly, with any provision to which the person's lease or occupation is subject.

(2) The reduction or grant of relief may be for a maximum period of 3 years, and may include a period before the approval.

(3) If the planning and land authority gives an approval under subsection (1), the liability or obligation of the lessee or occupier under the lease, or in relation to the person's occupation, is discharged for the period approved, to the extent of the reduction or grant of relief approved.

(4) An approval under subsection (1) may be conditional.

(5) If the planning and land authority approves a grant of relief to a lessee or occupier under subsection (1), the authority must give the lessee or occupier written notice of the reduction of rent or amount payable or other grant of relief approved.

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

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Part 9.6 Lease variations

Division 9.6.1 Lease variations—general

270 Effect subject to pt 9.7

This part has effect subject to part 9.7 (Rural leases).

Division 9.6.2 Variation of rental leases

271 Variation of rental leases

(1) The planning and land authority must not execute a variation of a rental lease unless any rent, including additional rent, payable under the lease up to the day of variation has been paid.

(2) If the planning and land authority executes a variation of a rental lease, the authority must reappraise the rent payable under the lease, following (as far as possible) the method provided by the rental provisions of the lease.

Note The application of subsection (2) (and s (3)) is reduced by subsection (4).

(3) If the planning and land authority executes a variation of a rental lease, the rent payable under the lease is to be adjusted in accordance with the reappraisal under subsection (2) with effect from the day the variation is executed.

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

(a) a rental lease—

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

(ii) otherwise affecting the rental provisions of the lease; or

(b) a land rent lease.

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272 Advice of rent payable on variation of lease

(1) This section applies if—

(a) the planning and land authority agrees to a variation of a lease; and

(b) the lease is a lease (other than a land rent lease) under which rent or additional rent is payable.

(2) The planning and land authority must—

(a) calculate the amount that would be payable under the lease for rent, including additional rent, up to the day when the authority expects the variation to be executed; and

(b) give the lessee written notice of—

(i) the amount calculated for rent, including additional rent, under paragraph (a); and

(ii) the day up to which the amount payable for rent and additional rent has been calculated; and

(iii) the day by which the authority requires payment of the amount stated under subparagraph (i) to allow the variation of the lease to be executed on the day stated under subparagraph (ii).

272A Application for rent payout lease variation

(1) This section applies to the following leases:

(a) a land rent lease;

(b) a lease that is included in a class of leases prescribed by regulation.

(2) The lessee may apply to the planning and land authority for a variation of the lease to reduce the rent payable to a nominal rent.

Note If a form is approved under s 425 for this provision, the form must be used.

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272B Decision on rent payout lease variation application

(1) Within the period prescribed by regulation after the day the planning and land authority receives an application by a lessee under section 272A, the authority must—

(a) decide to vary the lease to reduce the rent payable to a nominal rent; or

(b) if subsection (2) prevents the authority from varying the lease—refuse to vary the lease.

(2) The planning and land authority must not vary the lease to reduce the rent payable to a nominal rent unless—

(a) all amounts payable to the Territory up to the day of variation of the lease for rates and land tax levied in relation to the land comprised in the lease have been paid; and

(b) for a land rent lease, all rent and other amounts payable to the commissioner for revenue under the *Land Rent Act 2008* up to the day of variation in relation to the land comprised in the lease have been paid; and

(c) the provisions of the lease requiring the lessee to develop the land comprised in the lease have been complied with up to the day of the variation; and

(d) the lessee has paid the Territory an amount decided by the planning and land authority by reference to any policy direction made under section 272C.

(3) The planning and land authority must give written notice of the decision on the application to the applicant.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

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272C Policy directions for paying out rent

(1) The Minister may make policy directions for section 272B (2) (d).

(2) A policy direction is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

272D Power to decide rent payout applications deemed refused

(1) This section applies if—

(a) an application has been made under section 272A (Application for rent payout lease variation); and

(b) the time for deciding the application has ended; and

(c) the planning and land authority has not decided the application under section 272B.

(2) The planning and land authority may decide to vary the lease to reduce the rent payable to a nominal rent under section 272B despite the ending of the time for deciding the application.

(3) To remove any doubt, if the planning and land authority has not decided the application under section 272B, the authority is taken to have decided to refuse the application under the *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision).

273 Lease to be varied to pay out rent

(1) This section applies if the planning and land authority decides to vary a lease under section 272B to reduce the rent payable to a nominal rent.

(2) The planning and land authority must vary the lease in accordance with the decision.

(3) The lease as varied must provide that the lessee is to pay a nominal rent if and when that rent is demanded.

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274 No variations to extend term

The planning and land authority must not execute a variation of a lease to extend the term of the lease.

275 No variation of certain leases for 5 years

(1) This section applies to the following leases:

(a) a lease granted in accordance with section 241;

(b) a lease to which section 251 applies.

Note This section also applies to leases granted under the *Land (Planning and Environment) Act 1991*, s 164 (see s 451).

(2) However, this does not apply to a lease exempted by regulation.

(3) The planning and land authority must not consent to the variation of a lease to which this section applies earlier than 5 years after the day the lease is granted.

(4) However, the planning and land authority may consent to the variation if the variation does not limit, add or remove an authorised use of the land.

(5) In this section:

authorised use, of land—

(a) means a use authorised (whether expressly or by implication) by a lease; and

(b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

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Division 9.6.3 Variation of nominal rent leases

Note 1 This division is a tax law under the *Taxation Administration Act 1999*. As a tax law, this division is subject to provisions of the *Taxation Administration Act 1999* about the administration and enforcement of tax laws generally.

Note 2 The commissioner for revenue may delegate the commissioner's functions under this division to the planning and land authority (see *Taxation Administration Act 1999*, s 78).

276 Definitions—div 9.6.3

In this division:

chargeable variation, of a nominal rent lease, means a variation of the lease other than—

(a) a variation, if—

(i) the only effect of the variation is to alter a common boundary between 2 or more adjoining leases; and

(ii) the authorised use of the land comprised in each adjoining lease (however described) is the same; and

(iii) none of the adjoining leases is a rural lease; or

(b) a variation if the only effect of the variation is to remove the lease's concessional status; or

(c) a variation prescribed by regulation.

Note ***Variation***, of a lease—see the dictionary.

gross floor area—see the territory plan (13 Definitions).

LVC determination means a determination made under section 276E (Lease variation charges—LVC determination).

original decision—see section 277B (1) (b) (Lease variation charge under s 277—working out statement).

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reconsideration application—see section 277C (5) (Lease variation charge under s 277—application for reconsideration).

s 276E chargeable variation—see section 276A.

s 277 chargeable variation—see section 276A.

working out statement—see section 277B (2) (Lease variation charge under s 277—working out statement).

276A Meaning of *s 276E chargeable variation* and *s 277 chargeable variation*—div 9.6.3

(1) In this division:

s 276E chargeable variation, of a nominal rent lease, means a chargeable variation that is 1 of the following:

(a) if a development application relates to the chargeable variation of only 1 residential lease—a variation to increase the number of dwellings permitted on the land under the lease;

Example

a variation of a nominal rent lease to increase the maximum number of 20 residential units permitted on the land under the lease to 40 units

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).

(b) if a development application relates to the chargeable variation of only 1 residential lease—a variation to limit the number of dwellings permitted on the land under the lease;

Example

A lease permits land to be used for residential purposes but does not state any limit on the number of permitted residences on the land. The lessee proposes to subdivide the land under the *Unit Titles Act 2001*. That Act, s 20 (2A) does not allow the lease to be subdivided unless the lease provides for the number of dwellings on the land. The lessee must vary the lease to limit the number of dwellings permitted on the land before subdividing the land.

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(c) if a development application relates to the chargeable variation of only 1 non-residential lease—a chargeable variation of the lease that—

(i) increases, or has the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the lease; or

(ii) increases or limits the number of dwellings permitted on the land under the lease;

(d) the consolidation of 2 or more nominal rent leases;

(e) the subdivision of 1 or more nominal rent leases;

(f) if 2 or more nominal rent leases are consolidated—a variation that—

(i) increases the number of dwellings permitted on the land under the consolidated lease; or

(ii) increases, or has the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the consolidated lease;

(g) if 1 or more nominal rent leases are subdivided—a variation that—

(i) increases the number of dwellings permitted on the land under the subdivided lease; or

(ii) increases, or has the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the subdivided lease;

(h) a chargeable variation prescribed by regulation.

Note If a chargeable variation is not a s 276E chargeable variation the lease variation charge is worked out under s 277 (see s 276C).

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s 277 chargeable variation means—

(a) a chargeable variation that is not a s 276E chargeable variation; or

(b) a s 276E chargeable variation if no lease variation charge is determined in an LVC determination for the variation.

(2) In this section:

consolidated lease means a lease granted during a consolidation involving the surrender of 1 or more nominal rent leases.

non-residential lease means a lease other than a residential lease under section 234.

subdivided lease means a lease granted during a subdivision involving the surrender of 1 or more nominal rent leases.

276B Chargeable variation of nominal rent lease—lease variation charge

(1) The planning and land authority must not execute a chargeable variation of a nominal rent lease unless the lessee has paid the Territory the lease variation charge for the variation, less any remission under section 278A to section 278F, plus any increase under section 279.

Note If the planning and land authority has executed a variation of a nominal rent lease, the authority must lodge a copy of the variation with the registrar-general for registration. A lease variation takes effect on registration (see *Land Titles Act 1925*, s 72A).

(2) A lease variation charge is taken to be paid to the Territory if—

(a) the amount of the charge is waived by the Treasurer under the *Financial Management Act 1996*, section 131 (Waiver of debts etc); or

(b) part of the amount is waived and the rest of the amount is paid.

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(3) Payment of the lease variation charge does not affect any right a person may have to apply for reconsideration under section 277D (Lease variation charge under s 277—requirements for reconsideration application).

276C Lease variation charges—amount payable

(1) The lease variation charge for a chargeable variation of a nominal rent lease is—

(a) for a s 276E chargeable variation—the determined charge for the variation; or

(b) for a s 277 chargeable variation—the charge (if any) worked out under section 277 for the variation.

(2) If a development approval of a development application relates to more than 1 chargeable variation of a nominal rent lease, the lease variation charge is worked out as follows:

(a) if all the chargeable variations are s 276E chargeable variations for which a charge is determined in an LVC determination—in accordance with the LVC determination;

(b) if all the chargeable variations are s 277 chargeable variations—in accordance with section 277;

(c) if 1 or more are a kind of variation mentioned in paragraph (a) and 1 or more are a kind of variation mentioned in paragraph (b)—as prescribed by regulation.

276D Lease variation charges—notice of assessment

(1) On approval of a development application for a chargeable variation, the commissioner for revenue must give—

(a) a notice of assessment of the lease variation charge to the lessee; and

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(b) if the development application in relation to the chargeable variation is made by someone other than the lessee—a copy of the notice to the applicant.

Note 1 The notice of assessment is an assessment under the *Taxation Administration Act 1999* as if the lease variation charge were a tax payable by the lessee under that Act (see this Act, s 279B (1)). However, no actual liability to pay the lease variation charge arises on the giving of the notice (see s 279B (2)). The planning and land authority must not execute a variation of the lease unless the lessee has paid the assessed lease variation charge (see s 276B (1)).

Note 2 The commissioner for revenue must give a notice of assessment as soon as possible after the development application for the chargeable variation has been approved (see Legislation Act, s 151B).

(2) A lease variation charge is taken to be worked out—

(a) on the day the development approval of the chargeable variation is approved; or

(b) if another day is prescribed by regulation—on that day.

(3) A notice of assessment lapses on the earlier of—

(a) the day the lease variation charge is paid; or

(b) the day the development approval of the chargeable variation lapses.

276E Lease variation charges—s 276E chargeable variations

(1) The Treasurer may determine a lease variation charge for a s 276E chargeable variation.

Note 1 The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

Note 2 Power to make a statutory instrument (including a determination) includes the power to make different provision for different categories (see Legislation Act, s 48).

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(2) In considering whether to determine a lease variation charge for a s 276E chargeable variation, the Treasurer must, before the start of each financial year—

(a) obtain and have regard to advice from an accredited valuer; and

(b) comply with any other requirement prescribed by regulation.

(3) A determination must—

(a) as far as is practicable, represent the average market value in relation to the variation; and

(b) if a variation increases the number of dwellings permitted on the land under the lease—state an amount for each additional dwelling permitted on the land under the lease; and

(c) if a variation increases, or has the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the lease—state an amount for each additional square metre of gross floor area permitted on the land under the lease; and

(d) otherwise be made in accordance with any guideline approved under section 276F.

(4) The determination must state—

(a) the reasons for determining the lease variation charge; and

(b) how the charge was determined.

(5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(6) In this section:

average market value means the value worked out in accordance with a guideline approved under section 276F.

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(7) Subsection (3) (a) does not apply to a determination made within 1 year after the day this section commences.

(8) This subsection and subsection (7) expire 1 year after the day this section commences.

276F Lease variation charges—guidelines for LVC determination

(1) The Treasurer may approve guidelines for—

(a) how lease variation charges in the LVC determination must be determined; and

(b) how the LVC determination is prepared, including who the Treasurer may or must consult; and

(c) what must be included in the LVC determination.

Example—par (a)

valuation methods and assumptions

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) A guideline is a disallowable instrument.

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

277 Lease variation charges—s 277 chargeable variations

(1) The commissioner for revenue works out the lease variation charge for a s 277 chargeable variation of a nominal rent lease as follows:

$$LVC = (V_1 - V_2) \times 75\%$$

(2) In this section:

LVC means the lease variation charge payable for the s 277 chargeable variation of the lease.

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V_1—

(a) for a variation other than a consolidation or subdivision, means the capital sum that the lease might be expected to realise if—

(i) the lease were varied as proposed; and

(ii) the lease were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and

(iii) the rent payable throughout the term of the lease or, for a variation that involves the surrender of a lease and issue of a new lease, the new lease, were a nominal rent; or

(b) for a variation that is a consolidation or subdivision, means the capital sum that the new lease or leases to be granted under the consolidation or subdivision might be expected to realise if—

(i) the consolidation or subdivision were to take place as proposed; and

(ii) the new lease or leases were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and

(iii) the rent payable throughout the term of the new lease or leases were a nominal rent.

V_2—

(a) for a variation other than a consolidation or subdivision, means the capital sum that the lease might be expected to realise if—

(i) the lease were not varied during the remainder of its term; and

(ii) the lease were genuinely offered for sale immediately before the variation on the reasonable terms and conditions that a genuine seller would require; and

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(iii) the rent payable throughout the term of the lease, or lease to be surrendered, were a nominal rent; or

(b) for a variation that is a consolidation or subdivision, means the capital sum that the lease or leases to be surrendered under the consolidation or subdivision might be expected to realise if—

(i) no consolidation or subdivision were to take place during the remainder of the term of the surrendered lease or leases; and

(ii) the lease or leases were genuinely offered for sale immediately before the consolidation or subdivision on the reasonable terms and conditions that a genuine seller would require; and

(iii) the rent payable throughout the term of the lease or leases to be surrendered were a nominal rent.

(3) If the amount worked out as V_1 is equal to or less than the amount worked out as V_2, no lease variation charge is payable.

(4) If the development approval for the relevant development application relates to 2 or more s 277 chargeable variations, V_1 and ***LVC*** are worked out as if the s 277 chargeable variations were a single s 277 chargeable variation of the lease.

277A Lease variation charge under s 277—improvements

(1) In working out V_1 and V_2 under section 277, an improvement in relation to the land comprised in the lease must not be taken into account.

Note Power to make a regulation in relation to a matter includes power to make provision in relation to a class of a matter (see Legislation Act, s 48 (2)).

(2) However, an existing improvement by way of clearing, filling, grading, draining, levelling or excavating the land may be taken into account.

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(3) In this section:

improvement, in relation to land, means an existing or proposed improvement and includes any of the following:

(a) a building or structure on or under the land;

(b) an alteration or demolition of an existing building or structure on or under the land;

(c) the remediation of the land;

(d) earthworks, planting or other work that affects the landscape of the land;

(e) anything mentioned in paragraphs (a) to (d) that is required—

(i) as a condition of a development approval; or

(ii) by a statutory approval obtained or required for a development proposal; or

(iii) under an agreement between the Territory or a territory entity and—

(A) the lessee; or

(B) if the lessee is not the applicant for the development approval—the applicant.

(f) anything mentioned in paragraphs (a) to (d) proposed in a development application in relation to a chargeable variation of a nominal rent lease to be carried out on land outside of the land under the lease.

remediation—see the *Environment Protection Act 1997*, dictionary.

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277B Lease variation charge under s 277—working out statement

(1) This section applies if—

(a) a development application in relation to a s 277 chargeable variation of a nominal rent lease is approved; and

(b) the lease variation charge in relation to the s 277 chargeable variation has been worked out (the ***original decision***); and

(c) the commissioner for revenue gives a notice of assessment of a lease variation charge under section 276D (1); and

(d) an application has not previously been made under section 277C for reconsideration of the original decision.

(2) The applicant may ask the commissioner for revenue for a statement (a ***working out statement***) explaining the commissioner's working out of the original decision.

Note If a form is approved under s 425 for this provision, the form must be used.

(3) The commissioner for revenue must give the applicant a working out statement within 20 working days after the day the applicant asks for the statement unless—

(a) the notice of assessment contains the matters that the working out statement would contain; or

(b) a document that contains the matters that a working out statement would contain has already been given to the applicant.

277C Lease variation charge under s 277—application for reconsideration

(1) The applicant for the development application may apply for reconsideration of the original decision on the earlier of—

(a) the day the applicant receives a working out statement; and

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(b) the end of the 20-working day period mentioned in section 277B (3).

(2) If a development approval of a development application relates to more than 1 chargeable variation of a nominal rent lease, this section only applies to the part of the lease variation charge that is worked out for a s 277 chargeable variation.

Note The total lease variation charge for a development application that relates to more than 1 chargeable variation is worked out in accordance with s 276C (2).

(3) This section does not apply to a reassessment of a lease variation charge under section 279A.

(4) If the applicant for the development application is not the lessee, the lessee may apply for reconsideration under this section instead of the applicant.

(5) An application for reconsideration of the original decision (the ***reconsideration application***) must be made not later than—

(a) the later of—

(i) 80 working days after the day the notice of assessment under section 276D (1) is given; and

(ii) if a later day is prescribed by regulation—that day; or

(b) any longer period allowed by the commissioner for revenue.

Note The commissioner for revenue may extend the period after the end of the period being extended (see Legislation Act, s 151C (3)).

277D Lease variation charge under s 277—requirements for reconsideration application

(1) The reconsideration application must be in writing and signed by—

(a) the lessee; and

(b) if the application is made by the applicant for the development application who is not the lessee—the applicant.

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(2) Also, the reconsideration application must—

(a) set out the grounds on which reconsideration of the original decision is sought; and

(b) in relation to the original decision—include an independent valuation that works out the amounts represented by V_1 and V_2 in section 277; and

(c) if the commissioner for revenue gives the applicant a working out statement before the end of the 20-working day period mentioned in section 277B (3)—include the statement.

(3) If subsection (2) (c) applies, the applicant for the reconsideration must give the valuer for the independent valuation the commissioner for revenue's working out statement.

(4) The independent valuation must be prepared by an accredited valuer who—

(a) was not involved in working out or advising on the original decision; and

(b) is—

(i) agreed to by the applicant for the reconsideration and the commissioner for revenue; or

(ii) if the applicant and the commissioner cannot agree—appointed in writing by a person prescribed by regulation; and

(c) satisfies any requirement prescribed by regulation.

(5) The applicant for the reconsideration is responsible for the cost of the independent valuation.

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277E Lease variation charge under s 277—reconsideration

(1) Within 20 working days after receiving a reconsideration application, the commissioner for revenue must—

(a) reconsider the original decision; and

(b) either—

(i) make a decision in substitution for the original decision that the commissioner could have made; or

(ii) confirm the original decision.

(2) The 20-working day period mentioned in subsection (1) may be extended for a stated period by agreement between the commissioner for revenue and the applicant for the reconsideration.

(3) In reconsidering the original decision, the commissioner for revenue—

(a) must consider the independent valuation required under section 277D (2) (b) and any other information given in the reconsideration application; and

(b) may consider any other relevant information.

(4) The commissioner for revenue must ensure that, if the original decision is made by the commissioner or a person on the commissioner's behalf (the ***original decision-maker***), someone other than the original decision-maker reconsiders the decision.

277F Lease variation charge under s 277—no action by commissioner within time

If the commissioner for revenue does not make a substitute decision, or confirm the original decision, by the end of the 20-working day period mentioned in section 277E (1), or the period as extended by agreement under section 277E (2), the commissioner is taken to have confirmed the original decision.

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277G Lease variation charge under s 277—notice of decisions on reconsideration

The commissioner for revenue must give written notice of the decision on the reconsideration to—

(a) the lessee; and

(b) if the application is made by the applicant for the development application who is not the lessee—the applicant.

Note The notice must be a reviewable decision notice (see s 408 (2)).

278 When commissioner must remit lease variation charge—sustainability

(1) This section applies if—

(a) a development application for a chargeable variation of a nominal rent lease is approved; and

(b) the approval also relates to the development of a building on the land under the lease; and

(c) the building complies with a requirement for energy efficiency determined by the Minister.

(2) The Minister may determine a requirement for energy efficiency under subsection (1) (c).

(3) The Treasurer may determine—

(a) an amount to be remitted for a lease variation charge for the chargeable variation; and

(b) when the amount must be remitted.

(4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

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(5) The commissioner for revenue must remit the amount determined under subsection (3) (a) for the lease variation charge for the chargeable variation when the amount is determined to be remitted under subsection (3) (b).

278A When commissioner must remit lease variation charge—certain zones

(1) This section applies to a chargeable variation of a nominal rent lease if—

(a) the variation—

(i) increases the number of dwellings permitted on the land under the lease; or

(ii) increases, or has the effect of increasing, the maximum gross floor area of any building or structure on the land under the lease; and

(b) the land is in a zone determined by the Minister; and

(c) any circumstances determined by the Minister apply to the variation.

(2) The Minister may determine—

(a) a zone for subsection (1) (b); and

(b) circumstances for subsection (1) (c).

(3) The Treasurer may determine an amount to be remitted for a lease variation charge for the chargeable variation.

(4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

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278B When commissioner must remit lease variation charge—community purpose

(1) This section applies to a chargeable variation of a nominal rent lease that authorises development in relation to a community purpose determined by the Minister.

(2) The Minister may determine a community purpose for subsection (1).

(3) The Treasurer may determine an amount to be remitted for a lease variation charge for the chargeable variation.

(4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

278C When commissioner must remit lease variation charge—heritage significance

(1) This section applies if—

(a) a development application for a chargeable variation of a nominal rent lease is approved; and

(b) a place or object on the land under the lease is registered under the *Heritage Act 2004*; and

(c) any circumstances determined by the Minister apply to the variation.

(2) The Minister may determine—

(a) circumstances for subsection (1) (c); and

(b) criteria for working out the cost to the lessee of complying with the *Heritage Act 2004* in relation to the place or object.

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(3) The Treasurer may determine an amount to be remitted for a lease variation charge, having regard to any criteria determined under subsection (2) (b).

(4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

278D When commissioner must remit lease variation charge—environmental remediation

(1) This section applies if—

(a) a development application for a chargeable variation of a nominal rent lease is approved; and

(b) it is a condition of the approval that the lessee carry out remediation of the land under the lease; and

(c) any circumstances determined by the Minister apply to the variation.

(2) The Minister may determine—

(a) circumstances for subsection (1) (c); and

(b) criteria for working out the cost to the lessee of the remediation of the land.

(3) The Treasurer may determine an amount to be remitted for a lease variation charge, having regard to any criteria determined under subsection (2) (b).

(4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

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(5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

(6) In this section:

remediation—see the *Environment Protection Act 1997*, dictionary.

278E When commissioner must remit lease variation charges—other

(1) The Minister may determine circumstances in addition to section 278 to section 278D in which an amount of a lease variation charge for a chargeable variation of a nominal rent lease must be remitted.

(2) The Treasurer may determine an amount to be remitted for a lease variation charge for a chargeable variation in a circumstance determined by the Minister.

(3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(4) The commissioner for revenue must remit the amount determined under subsection (2) for the lease variation charge for the chargeable variation.

278F When commissioner must remit lease variation charges—chargeable variations generally

(1) The Treasurer may determine, for a financial year, an amount to be remitted for each lease variation charge for a chargeable variation for which a notice of assessment has been given under section 276D in the financial year.

(2) The amount must be expressed as a percentage of the lease variation charge for a chargeable variation.

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(3) The determination must be made not less than 1 year before the beginning of the financial year for which the determination will apply.

(4) The commissioner for revenue must remit the amount determined under subsection (1) for a chargeable variation to which the determination applies.

(5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(6) Subsection (3) does not apply to a determination made within 1 year after the day this section commences.

(7) This subsection and subsection (6) expire 1 year after the day this section commences.

279 When commissioner must increase lease variation charge

(1) The commissioner for revenue must increase a lease variation charge for a chargeable variation of a nominal rent lease as prescribed by regulation.

(2) A regulation may prescribe the amount of the increase under subsection (1).

(3) Subject to any disallowance or amendment under the Legislation Act, chapter 7, the regulation commences—

(a) if there is a motion to disallow the regulation and the motion is negatived by the Legislative Assembly—the day after the day the disallowance motion is negatived; or

(b) the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or

(c) if the declaration provides for a later date or time of commencement—on that date or at that time.

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279A Lease variation charge—reassessment

(1) This section applies if—

(a) a development application for approval of a chargeable variation of a nominal rent lease is approved; and

(b) the commissioner for revenue gives a notice of assessment of a lease variation charge under section 276D (1); and

(c) the planning and land authority executes a variation of the lease to which the lease variation charge relates.

(2) The commissioner for revenue may reassess the lease variation charge under the *Taxation Administration Act 1999*, section 9 (Reassessment).

(3) The commissioner for revenue must give—

(a) a notice of assessment of the lease variation charge to the lessee; and

(b) if the development application in relation to the chargeable variation is made by someone other than the lessee—a copy of the notice to the applicant.

Note The assessment notice must show the amount of the reassessment and the amount by which the assessment has been increased or decreased (see *Taxation Administration Act 1999*, s 14 (3)).

(4) For this division, the *Taxation Administration Act 1999*, part 10 (Objections and reviews) applies only to a reassessment of a lease variation charge under this section.

Note 1 Either the lessee or, if the lessee is not the applicant for the development approval, the applicant for the development approval, may apply under this Act for reconsideration of a notice of an assessment of a lease variation charge worked out under s 277 (see s 277D).

Note 2 A notice of a reassessed lease variation charge is an internally reviewable decision (see *Taxation Administration Act 1999*, s 107, def ***internally reviewable decision***), and the notice of assessment must be an internal review notice (see that Act, s 107B).

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279B Application of Taxation Administration Act

(1) The *Taxation Administration Act 1999* applies to this division as if a lease variation charge for a chargeable variation were a tax payable from the day the development application in relation to the chargeable variation is approved.

(2) For this division, a tax liability in relation to a chargeable variation only arises if the planning and land authority executes a variation of the lease to which the chargeable variation relates.

Note The planning and land authority must not execute a variation of a nominal rent lease unless the lessee has paid the lease variation charge worked out under s 276B, less any remission under s 278, plus any increase under s 279 (see s 276B (1)).

279C Taxation Administration Act—disclosure of information

For the *Taxation Administration Act 1999*, division 9.4 (Secrecy), a tax officer under that Act may disclose information obtained under or in relation to the administration of this division to the planning and land authority or a person authorised by the authority to receive the information.

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Part 9.7 Rural leases

Note to pt 9.7

Improvement, in relation to rural leases, has a special meaning (see s 288).

Division 9.7.1 Further rural leases

280 Determination of amount payable for further leases—rural land

(1) The Minister may make a determination for section 254 (1) (e) (i) or (ii) (Grant of further leases).

(2) A determination for section 254 (1) (e) (ii) may provide that the amount payable for the grant of the lease is payable in stated instalments.

(3) If the Minister has not made a determination under subsection (1), the amount that is taken to have been determined for a rural lease is the market value of the lease, payable as a lump sum.

(4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

281 Fixing period for further leases—rural land

(1) The Minister may make a determination for section 254 (2) (b).

(2) However, if the national capital authority has set a maximum term for a rural lease of land in a designated area, the Minister must not determine a period under subsection (1) for a further rural lease of the land in a designated area that is longer than the maximum term set by the national capital authority.

(3) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

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Division 9.7.2 Exceptions for rural leases

282 Definitions—div 9.7.2

In this division:

discharge amount means the discharge amount worked out as prescribed by regulation.

holding period, for a lease, is a period ending—

(a) if the discharge amount is paid—when the discharge amount is paid; or

(b) in relation to a lease for a term of 21 years or longer—10 years after the lease commences; or

(c) in relation to a lease for a term shorter than 21 years—at the end of 1/3 the term of the lease.

283 Land management agreements

Note Section 285 contains exceptions to this section.

(1) This section applies to the following actions:

(a) granting a rural lease;

(b) granting a further rural lease;

(c) varying a rural lease;

(d) consenting to the assignment or transfer of a rural lease.

(2) The planning and land authority may take action to which this section applies only if—

(a) the person to whom the lease is to be granted, assigned or transferred, or the person whose lease is to be varied, has entered into an agreement with the Territory about managing the rural land comprised in the lease; and

(b) the agreement complies with this section.

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(3) An agreement between a person and the Territory complies with this section if it is—

(a) in accordance with a form approved by the planning and land authority under section 425 (Approved forms) for this section; and

(b) signed by—

(i) the conservator of flora and fauna; and

(ii) the person.

(4) An agreement may contain a provision allowing the agreement to be varied other than by agreement between the parties.

284 Dealings with rural leases

Note Section 285 contains exceptions to this section.

(1) This section applies to—

(a) a rural lease granted under section 238 (Granting leases); and

(b) a grant of a further lease of a rural lease.

Note This section has an extended application (see s 454).

(2) A lessee, or anyone else with an interest in the lease, must not deal with a lease to which this section applies without the written consent of the planning and land authority.

(3) A dealing in relation to a lease made or entered into without consent has no effect.

(4) The planning and land authority must consent under this section to a dealing in relation to a lease if—

(a) either—

(i) the lessee's domestic partner or child is the person to whom—

(A) the lease is being assigned or transferred; or

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(B) the land comprised in the lease, or part of it, is sublet; or

(C) possession of the land comprised in the lease, or part of it, is being given; or

(ii) the holding period for the lease has ended; and

(b) if section 283 applies to the dealing—the person to whom the lease is to be granted has entered into an agreement with the Territory in accordance with section 283.

(5) The validity of a dealing made or entered into with the consent of the planning and land authority is not affected—

(a) by a defect or irregularity in relation to the giving of the consent; or

(b) because a ground, or all grounds, for the consent had not arisen.

(6) To remove any doubt, a person is not required to pay a discharge amount more than once under this section in relation to a rural lease.

(7) In this section:

child, of a lessee, includes a child of the lessee's domestic partner.

285 Exceptions to s 283 and s 284

Section 283 and section 284 do not apply to the transfer or assignment of a lease, or an interest in the lease, if—

(a) the lessee has died; or

(b) the transfer or assignment is made under any of the following orders:

(i) an order of the Family Court;

(ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);

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(iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship; or

(c) the transfer or assignment happens by operation of, or under, bankruptcy or insolvency.

Note The person to whom the lease, or interest, has been transferred or assigned must enter into a land management agreement (see s 286).

286 Delayed requirement to enter into land management agreement

(1) This section applies if a lease, part of the lease or an interest in the lease, to which section 283 or section 284 applies has been transferred or assigned to someone (the ***interest holder***) who has not entered into a land management agreement for the rural land comprised in the lease, or part of the lease, or to which the interest relates.

(2) The interest holder must enter into a land management agreement for the rural land comprised in the lease, or part of the lease, or to which the interest relates not later than 6 months (or any extended period) after the day the lease, part of the lease or interest, is transferred or assigned to the interest holder.

(3) The planning and land authority may, in writing, extend the period under subsection (2) for entering into a land management agreement.

Note The planning and land authority may extend the period under s (2) after the end of the period being extended (see Legislation Act, s 151C (3)).

287 No subdivision or consolidation of rural leases

The planning and land authority must not consent to the consolidation or subdivision of a lease to which section 284 applies during the holding period.

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Part 9.8 Leases—improvements

288 Definitions—pt 9.8

In this part:

improvement, in relation to land, means—

(a) a building or structure on or under the land; or

(b) for land held under a rural lease—

(i) a building or structure on or under the land; or

(ii) any earthworks, planting or other work that affects the landscape of the land that is reasonably undertaken for rural purposes.

lessee, for a lease that has ended, whether by termination, surrender, end of term or otherwise, means the person who was the lessee under the lease when the lease ended.

undertaken, in relation to an improvement that is a building or structure, means the construction of the building or structure.

289 Application of pt 9.8 to improvements

This part applies only to the following improvements to land:

(a) an improvement undertaken in a way consistent with the law of the Territory, and with any lease over the land, other than—

(i) an improvement undertaken by the Territory or the Commonwealth (subject to paragraph (b)); or

(ii) an improvement acquired by the Territory or the Commonwealth (subject to paragraph (c));

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(b) an improvement undertaken by the Territory or the Commonwealth, if the Territory or the Commonwealth has received, or is entitled to receive, payment for the improvement;

(c) an improvement acquired by the Territory or the Commonwealth, if the Territory or the Commonwealth has received, or is entitled to receive, payment for the improvement.

290 Renewing lessee not liable to pay for improvements

(1) This section applies if—

(a) the term of a lease expires; and

(b) there are improvements to which this part applies on the land comprised in the lease; and

(c) the lessee is granted a further lease of the land or part of it.

(2) The lessee is not liable to pay the planning and land authority for the improvements on the land or part of the land.

291 Authority to pay for certain improvements

(1) This section applies if—

(a) the term of a lease expires; and

(b) there are improvements to which this part applies on the land comprised in the lease; and

(c) there is no provision in the lease that precludes or limits the right of the lessee to payment in relation to the improvements; and

(d) the lessee is not granted a further lease of the land, or is granted a lease of only part of the land.

Note Section 293 and s 294 make this section apply in other cases.

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(2) The planning and land authority is liable to pay the lessee—

(a) if no further lease of the land is granted to the lessee—the amount decided by the authority to be the value of the improvements on the land; or

(b) if a further lease of only part of the land is granted to the lessee—the amount decided by the authority to be the value of the improvements to which this section applies on the part of the land not leased.

Note Under s 292, the planning and land authority may be required to deduct an amount from the amount payable under this section.

292 Land declared available for further lease

(1) This section applies if—

(a) the planning and land authority is liable to pay a lessee an amount under section 291; and

(b) before the expiry of the term of the lease, the authority declared that the land comprised in the lease, or part of the land, was available for a further lease; and

(c) the lessee does not elect to take a further lease of the land, or part of the land, declared to be available not later than 6 months after the expiry of the term of the lease.

(2) The amount of any expenditure reasonably incurred by the Territory, the planning and land authority or both, in relation to the grant of a lease of the land, or part of the land, to anyone else must be deducted from the amount payable to the lessee under section 291.

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293 Lease surrendered or terminated

(1) This section applies if—

(a) a lease is surrendered or terminated; and

(b) the lessee has fully complied with the provisions (if any) of the lease relating to the construction of a building on the land comprised in the lease; and

(c) there is no provision in the lease that precludes or limits the right of the lessee to payment in relation to improvements on the land comprised in the lease.

(2) Section 291 and section 292 apply in relation to the lease (so far as applicable) as if the term of the lease had expired on the day the lease was surrendered or terminated.

(3) However, the amount worked out under subsection (4) must be deducted from any amount payable under section 291 to the lessee of the surrendered or terminated lease.

(4) The planning and land authority may work out the amount of the expenditure reasonably incurred by the Territory, the authority or both, in relation to the surrender or termination of the lease.

294 Withdrawal of lease or part before end

(1) This section applies if—

(a) before the end of the term of a lease, the planning and land authority withdraws all or part of the leased land from the lease under a provision of the lease; and

(b) the lessee has fully complied with the provisions (if any) of the lease relating to the construction of a building on the land comprised in the lease; and

(c) there is no provision in the lease that precludes or limits the right of the lessee to payment in relation to improvements on the land comprised in the lease.

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(2) Section 291 and section 292 apply in relation to the lease, or the part of the lease that comprises the land withdrawn, as if the term of the lease, or part of the lease, had ended on the day of the withdrawal.

295 Deciding value of improvements

(1) In this section:

assessment day means—

(a) in relation to land if the term of the lease has expired—the day the term expired; or

(b) in relation to land a lease of which has been terminated or surrendered—the day the lease was terminated or surrendered; or

(c) in relation to land that has been withdrawn from a lease—the day of withdrawal.

market value, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale on the open market on the day before the assessment day on the reasonable terms and conditions that a genuine seller might require.

(2) If compensation is payable under this part in relation to improvements, the planning and land authority must, as soon as practicable after the assessment day in relation to the land where the improvements are situated, in writing, decide, in accordance with this section, the market value of the improvements on the land as at the assessment day.

(3) If compensation is payable under section 291, the planning and land authority must, in valuing the improvements, assume that a further lease of the land had been granted subject to the same provisions, and for the same term, as the lease the term of which has expired.

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(4) If compensation is payable under section 293, the planning and land authority must, in valuing the improvements, assume that the lease of the land had not been terminated or surrendered.

(5) If compensation is payable under section 294, the planning and land authority must, in valuing the improvements, assume that the leased land or part of the leased land had not been withdrawn from the lease.

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Part 9.9 Leases—certificates of compliance and building and development provisions

296 Certificates of compliance

(1) If a building and development provision of a lease has been fully complied with, the planning and land authority must, on application by the lessee, issue a certificate of compliance stating that the provision has been complied with.

Note A single form may be used for a number of provisions, so a joint certificate of completion, certificate of compliance and certificate of occupancy may be issued (see Legislation Act, s 255 (7)).

(2) If a building and development provision of a lease has been partly complied with, the planning and land authority may issue a certificate of compliance stating that the provision has been partly complied with.

(3) A certificate of compliance under subsection (2) may be issued subject to a condition (stated in the certificate) that the lessee provides security in a stated form against failure to complete stated outstanding work.

(4) This section is subject to section 297.

297 Certificates of compliance relating to Unit Titles Act leases

(1) The planning and land authority must not issue a certificate of compliance under section 296 in relation to a building and development provision that a lease under the *Unit Titles Act 2001* is subject to unless satisfied under subsection (2).

(2) The planning and land authority must be satisfied—

(a) for every other lease in relation to the same subdivision under the *Unit Titles Act 2001* that is subject to a building and

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development provision—that the provision has been complied with, or a certificate of compliance has been issued under section 296 in relation to the provision; or

(b) that the occupier of the unit that is held under the lease will not, as occupier, be substantially inconvenienced by works being carried out, or that are to be carried out, in compliance with a building and development provision to which the lease of the common property or another unit contained in the same subdivision under the *Unit Titles Act 2001* is subject.

(3) For subsection (2), an occupier is ***substantially inconvenienced*** by works being carried out, or that are to be carried out, if the works are being, or are to be, carried out to the common property, or another unit, in the same stage of the development as the occupier's unit.

298 Transfer of land subject to building and development provision

(1) A lease containing a building and development provision, or an interest in the lease, cannot be transferred or assigned, either at law or in equity, unless—

(a) the lessee has died; or

(b) the transfer or assignment is made under any of the following orders:

(i) an order of the Family Court;

(ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);

(iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship; or

(c) the transfer or assignment happens by operation of, or under, bankruptcy or insolvency; or

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(d) the lessee has—

(i) a certificate of compliance under section 296; or

(ii) the consent of the planning and land authority under subsection (2) or (4).

Note A consent under the *City Area Leases Ordinance 1936* may be taken to be a consent under s (2) (see *Land (Planning and Environment) Act 1991*, s 292 (expired)).

(2) The planning and land authority may, in writing, consent to a legal or equitable transfer or assignment of a lease containing a building and development provision, or an interest in the lease, if—

(a) the authority—

(i) is satisfied that the proposed transferee or assignee intends to comply with the building and development provision; and

(ii) has been given the security (if any) required by the authority for compliance with the provision by the proposed transferee or assignee; and

(b) either—

(i) the authority is satisfied that the lessee cannot, for personal reasons prescribed by regulation, comply with the building and development provision; or

(ii) the authority is satisfied that—

(A) the lessee cannot comply with the building and development provision for financial reasons; and

(B) the financial reasons are connected with the lease; or

(iii) the authority is satisfied that—

(A) an unforeseen major event outside the lessee's control happened after the lessee purchased the lease; and

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(B) the event has had a demonstrable effect on the lessee's ability to develop the land comprised in the lease; or

(iv) the proposed transferee or assignee (the ***homebuyer***) has a contract with the person (the ***builder***) proposing to transfer or assign the lease and, under the contract, the builder is required to build a home on the leased land for the homebuyer; or

(v) the authority is satisfied that the transfer or assignment (the ***relevant transfer or assignment***) of the lease is—

(A) by the Territory, a territory entity, the Commonwealth or a Commonwealth entity (each of which is an ***entity***); and

(B) within the entity's functions; and

(C) necessary because of a change in a policy of the Territory, the Commonwealth or the entity that affects more than 1 transfer or assignment, or potential transfer or assignment, including the relevant transfer or assignment.

Examples of unforeseen major events

1 a bushfire

2 a large increase in interest rates

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) For subsection (2) (b) (ii), a financial reason is connected with the lease unless—

(a) the reason is that the lessee has borrowed an amount, using the land as security, for a purpose other than to purchase or develop the land; and

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(b) the amount is used for a purpose other than to meet an expense arising from a personal reason prescribed by regulation for subsection (2) (b) (i).

Examples of financial reasons not connected with lease

1 expenditure on purchase of other land

2 purchase of luxury car

3 expenditure on extended overseas holiday

(4) The planning and land authority may also, in writing, consent to a transfer of a lease containing a building and development provision, or an interest in the lease, if the proposed transfer is the first sale of an individual lease of undeveloped land by the person who provided the infrastructure on, and subdivided, the holding lease of which the individual lease is a subdivision.

(5) In deciding under subsection (2) or (4) whether to consent to a transfer or assignment of a lease, the planning and land authority must take into consideration any matters prescribed by regulation.

298A Application for extension of time to commence or complete works

(1) This section applies if a lease includes a building and development provision requiring the commencement or completion of works to take place within a stated time.

Note The planning and land authority may make a controlled activity order under div 11.3.2 (Controlled activity orders on authority's initiative) or terminate a lease under s 382 (Termination of leases) if a lessee fails to comply with a building and development provision.

(2) The lessee may, at any time before or after the stated time has ended, apply to the planning and land authority to extend the stated time under section 298B.

Note If a form is approved under s 425 for this provision, the form must be used.

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(3) The application must be accompanied by the most recent assessment notice for rates for the land.

298B Extension of time to commence or complete works

(1) This section applies to an application for extension of a stated time under section 298A.

(2) The planning and land authority must—

(a) approve the extension; or

(b) refuse to approve the extension.

(3) The planning and land authority must approve the extension if satisfied on reasonable grounds that the extension for the period sought would not cause an unacceptable delay to another development or land release.

(4) An approval may be given for a shorter extension than that sought by the application.

298C Extension of time to commence or complete works—required fee

(1) If the planning and land authority approves an extension of a stated time under section 298B, the approval is subject to the condition that the applicant pays the planning and land authority the amount, or the total of the amounts, (the ***required fee***) for each year, or part year, of the period of extension of time approved, worked out as follows:

$$A \times \frac{D}{365} \times B$$

Example

Frank applies for an extension of time for 1 October 2009 to 31 December 2011 (2 years and 92 days). In Frank's case, the *Planning and Development Regulation 2008* prescribes A in the above formula to be 1 for the 1st year, 2 for the 2nd year and 3 for the 3rd year of the period of extension. The fee is worked

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out using the following formula: [1 x 365/365 x B] + [2 x 365/365 x B] + [3 x 92/365 x B].

Note 1 The required fee may be waived under the *Financial Management Act 1996*, s 131.

Note 2 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) However, if an extension (the ***earlier extension***) of time has been approved, in working out the required fee for a further extension—

(a) the formula for working out the required fee applies as if the period of extension included each earlier extension, other than—

(i) an earlier extension for which the required fee was waived under the *Financial Management Act 1996*, section 131; or

(ii) an earlier extension prescribed by regulation; and

(b) the required fee is reduced by—

(i) the amount of the required fee paid for each earlier extension; and

(ii) if part of the required fee was waived under the *Financial Management Act 1996*, section 131 for an earlier extension—the amount waived.

(3) In this section:

A is the figure, not more than 5, prescribed by regulation for the relevant year of the period of extension.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

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B is the amount of rates imposed under the *Rates Act 2004*, section 14 in relation to the land for the financial year in which the application is made.

D is the lesser of—

(a) 365; and

(b) the number of days for which the extension is sought in the relevant year.

period of extension means—

(a) the period of extension applied for under subsection (2); or

(b) if an application seeks extensions for 2 or more building and development provisions in a lease—the longest of the extensions sought.

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Part 9.10 Surrendering and termination of leases

299 Lessee may surrender lease or part of lease

(1) A person who holds a lease may, at any time, with the consent of the planning and land authority, surrender the lease or part of the land comprised in the lease.

Note For provisions about compensation for improvements, see pt 9.8.

(2) The planning and land authority may agree to accept the surrender of a lease, or part of the land comprised in a lease, under subsection (1) either unconditionally or subject to any condition the authority considers appropriate.

(3) The surrender of a lease, or part of the land comprised in a lease, does not entitle the lessee to a refund or remission of any rent already paid or owing.

300 Refund on lease surrender or termination

(1) This section applies if a lease is surrendered or terminated under this Act.

(2) On application by the person surrendering the lease or the person whose lease has been terminated, the planning and land authority may authorise payment to the person of the amount prescribed by regulation.

(3) A regulation may prescribe when the planning and land authority may authorise a payment under this section.

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Part 9.11 Licences for unleased land

301 Criteria for granting licences for unleased land

(1) The Executive may determine criteria for the granting of licences to occupy or use unleased land.

Note A licence is a contractual right to do something that would be unlawful to do without the licence, eg to occupy or use land under the contract.

(2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

302 Applications for licences for unleased land

(1) A person may apply to the planning and land authority for a licence to occupy or use an area of unleased territory land.

Example of when a licence might be given to a person

to allow grazing of livestock on an area of unleased territory 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).

(2) An application under subsection (1) must—

(a) be in writing signed by the applicant; and

(b) state—

(i) the land (the ***subject land***) in relation to which the licence is sought; and

(ii) the period for which the licence is sought; and

(iii) the purposes for which it is proposed that the land should be used under the licence; and

(c) be accompanied by a written consent by the custodian for the subject land to the issue of the licence applied for.

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303 Decision on licence applications for unleased land

(1) On receiving an application under section 302, the planning and land authority may grant the applicant a licence to occupy or use the land, and any building or structure on the land, stated in the application for the purposes and period stated in the application.

Note An application must be accompanied by the custodian's written consent to the issue of the licence applied for.

(2) However, the planning and land authority must not grant a licence under subsection (1) to occupy or use public land unless the conservator of flora and fauna agrees in writing to the grant.

304 Licences—form etc

(1) A licence granted under section 303 must—

(a) be in writing; and

(b) state the period for which it is granted.

(2) A licence granted under section 303—

(a) applies to the person to whom it is granted; and

(b) is subject to the conditions (if any) stated in the licence.

305 Licences—when not needed

A person need not hold a licence granted under section 303 to occupy or use an area of unleased territory 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 development approval—

(i) the occupation or use has development approval; and

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(ii) if the occupation or use has development approval subject to a condition—the person is complying with the condition.

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Part 9.12 Leases and licences—miscellaneous

306 Land leased to be held as undivided parcel

(1) The land comprised in a lease must at all times be held and occupied by or under the lessee as 1 undivided parcel, unless section 307, section 308 or section 309 provides otherwise.

(2) The land comprised in a lease may be sublet and the lease and any interest in it may be assigned, transferred or mortgaged, unless a provision of this chapter provides otherwise.

307 Power of lessee to sublet part of building

(1) Any part of a building on land comprised in a lease may, subject to the lease, any sublease of the land and this Act, be sublet separately from the remainder of the building.

Note Section 251 and s 284 require consent before subleasing in some cases.

(2) If a part of a building is sublet separately from the remainder of the building, any part of the parcel of land with the building on it may be sublet with the part of the building separately from the remainder of the parcel of land, as long as the part of the parcel of land sublet adjoins the part of the parcel of land with the building on it.

(3) To remove any doubt, nothing in this section prevents the subletting of a whole building.

308 Power of lessee to sublet part of land

(1) Any part of land comprised in a lease must not be sublet without the prior written approval of the planning and land authority.

(2) The planning and land authority must not approve the subletting of a part of land comprised in a lease other than in accordance with criteria prescribed by regulation.

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(3) This section does not apply to a part of land sublet under section 309.

(4) To remove any doubt, nothing in this section prevents development in accordance with this Act on land sublet.

309 Subletting for siting of mobile homes

(1) This section applies if—

(a) a lease of territory land authorises the use of the land comprised in the lease as a mobile home park; and

(b) part of the land is being used, or intended to be used, for the siting of a mobile home.

(2) The part of the land may, subject to the lease and any sublease of the land, be sublet separately from the remainder of the land.

(3) In this section:

mobile home means a dwelling (whether or not on wheels) capable of being transferred from place to place and re-erected.

mobile home park means land used for the purpose of accommodating mobile homes or caravans, and includes a caravan park or camping ground.

310 Reservation of minerals

A reservation of minerals contained in a lease must be read as a reservation of all minerals and mineral substances in or on the land, including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, stone, clay, gravel and sand.

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311 Access to lease documents and development agreements

(1) The *Freedom of Information Act 1989*, section 11 (2) does not apply to a document that became a document of a Commonwealth agency before 1 January 1977 and is—

(a) a lease; or

(b) a variation of a lease; or

(c) a renewal of a lease.

(2) A document is taken not to be an exempt document for the *Freedom of Information Act 1989* if the document is—

(a) a lease; or

(b) a variation of a lease; or

(c) a renewal of a lease.

312 How land may be recovered if former lessee or licensee in possession

(1) This section applies if—

(a) a person who has been a lessee remains in possession of the land after—

(i) the term of the lease has ended; or

(ii) the lease has been surrendered or ended; or

(b) a person who has been a licensee remains in possession of the land after—

(i) the term of the licence has ended; or

(ii) the licence has been surrendered or ended.

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(2) The planning and land authority may, by written notice to the person (the ***unlawful occupier***), demand that the unlawful occupier give possession of the land to the authority within the reasonable period stated in the demand.

(3) If a demand is not complied with—

(a) the planning and land authority may apply to the Magistrates Court for an order that possession of the land be given to the authority; and

(b) the court may issue a warrant authorising a police officer, within 20 working days after the day the warrant is issued, to enter the land with the assistance and by the force that is reasonable, and give possession of the land to the authority.

(4) In this section:

licence means a licence granted by the Territory, the Commonwealth or the planning and land authority.

312A Conversion of Commonwealth leases

(1) This section applies if—

(a) a declaration under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 27 (1), that specified land in the Territory is national land, is amended or repealed; and

(b) because of the amendment or repeal of the declaration, the land ceases to be national land; and

(c) a lease granted under a prescribed law or over all or part of the land is in force immediately before the amendment or repeal of the declaration.

(2) The lease is taken to be granted under this Act on the amendment or repeal of the declaration.

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(3) In this section:

prescribed law means—

(a) any of the following laws in effect before the law was repealed:

(i) the *Leases Ordinance 1918*;

(ii) the *Leases (Special Purposes) Ordinance 1925*;

(iii) the *City Area Leases Ordinance 1936*; or

(b) a law mentioned in paragraph (a) as in effect under the *National Land Ordinance 1989* (Cwlth).

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Chapter 10 Management of public land

Notes to ch 10

Licences over public land are granted under pt 9.11.

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

Part 10.1 Interpretation—ch 10

313 Definitions—ch 10

In this chapter:

Note ***Custodian***—see s 333 (see dict). ***Custodianship map***—see s 334 (see dict).

management objectives, for an area of public land—see section 317.

plan of management means a plan of management under part 10.4.

variation, of a plan of management, includes the revocation of the plan and its substitution with a new plan.

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Part 10.2 Providing for public land

314 Recommendations to authority

The custodian for an area of unleased land, or the conservator of flora and fauna, may, in writing, recommend to the planning and land authority that the territory plan be varied to provide—

(a) for the identification of the area of land (or part of it) as public land and its reservation for a purpose mentioned in section 315; or

(b) in relation to an area already identified in the plan as public land—

(i) for the variation of the boundaries of the area to reduce or increase the size of the area, or to alter the shape of the area; or

(ii) for the variation of the purpose for which the area is reserved; or

(iii) that the land stops being public land.

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Part 10.3 Management of public land

315 Reserved areas—public land

Public land may be reserved in the territory plan, whether in the map or elsewhere in the plan, for any of the following purposes:

(a) a wilderness area;

(b) a national park;

(c) a nature reserve;

(d) a special purpose reserve;

(e) an urban open space;

(f) a cemetery or burial ground;

(g) the protection of water supply;

(h) a lake;

(i) a sport and recreation reserve;

(j) a heritage area.

316 Management of public land

An area of public land must be managed in accordance with—

(a) the management objectives applying to the area; and

(b) any plan of management for the area.

317 Management objectives for areas of public land

(1) The ***management objectives*** for an area of public land reserved for a particular purpose are—

(a) the management objectives stated in schedule 3 in relation to areas of land reserved for the purpose; and

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(b) the management objectives stated by the conservator of flora and fauna under subsection (2) in relation to areas of land reserved for the purpose.

(2) The conservator of flora and fauna may determine management objectives for an area of public land reserved for a purpose mentioned in schedule 3.

Note A power given under an Act to make a statutory instrument (including a determination of management objectives) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

(3) A determination of management objectives is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 An amendment or repeal of a determination of management objectives is also a disallowable instrument (see Legislation Act, s 46 (2)).

(4) If there is an inconsistency between the application of 2 management objectives stated in schedule 3 in relation to an area of public land, the objective appearing later in the schedule is to be read subject to the earlier objective.

(5) If there is an inconsistency between the application of a management objective stated in schedule 3 and a management objective stated by the conservator of flora and fauna under subsection (2) in relation to an area of public land, the objective stated by the conservator is to be read subject to the objective in schedule 3.

(6) In schedule 3:

natural environment means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

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Part 10.4 Plans of management for public land

318 Definitions—pt 10.4

In this part:

proponent means—

(a) for a draft plan of management, or technical variation of a plan of management, for an area of public land—the custodian of the land; or

(b) for a draft variation, or technical variation of a plan of management, for an area of public land—

(i) the custodian of the land; or

(ii) if the draft variation or technical variation was prepared by the conservator of flora and fauna—the conservator of flora and fauna.

technical variation, of a plan of management, includes a variation of the plan of management to—

(a) correct a minor error or anomaly in a geographical description of a boundary; or

(b) change an incorrect or outdated reference to a territory law; or

(c) update the name of an administrative unit or other territory entity.

319 Content of plans of management

A plan of management must include—

(a) a description of the area of public land to which it applies; and

(b) how the management objectives for the area are to be implemented or promoted in the area.

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320 Preparation of plans of management

(1) The custodian for an area of public land must prepare a draft plan of management for the area as soon as practicable after the area is identified as public land in the territory plan.

(2) The custodian for an area of public land may prepare a draft plan of management for the area if the custodian considers the existing plan of management is outdated.

(3) In preparing a draft plan of management for an area, the custodian for the area must consider any comment by the planning and land authority or the conservator of flora and fauna in relation to the area or the draft plan.

Note If the draft plan of management does not incorporate any comments by the planning and land authority or the conservator, an explanation of why must be given to the Minister (see s 325).

321 Variations of plans of management other than technical variations

(1) The custodian for an area of public land, or the conservator of flora and fauna, may prepare a draft variation of a plan of management (other than a technical variation) in the same way as a draft plan of management.

(2) However, the conservator of flora and fauna must not prepare a draft variation of a plan of management for an area of public land (other than a technical variation) unless the conservator has consulted the custodian for the area.

(3) This part applies to a draft variation of a plan of management (other than a technical variation) as if it were a draft plan of management.

322 Planning reports and SEAs—draft plans of management

(1) At any time before a draft plan of management is approved under section 327 (3) (a), the Minister may direct that a planning report or

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strategic environmental assessment be completed for any aspect of the draft plan.

(2) The Minister may act under subsection (1) after receiving a written request from the conservator of flora and fauna or on the Minister's own initiative.

(3) In preparing or revising a draft plan of management, the proponent must consider any relevant planning report or strategic environmental assessment.

323 Public consultation about draft plans of management

(1) This section applies to a draft plan of management (the ***final draft plan***) for an area of public land if—

(a) no preliminary draft plan of management for the area has been notified under section 63; or

Note A preliminary draft plan of management for an area would be notified under section 63 as a background paper to a territory plan variation (see s 58, def ***background papers***).

(b) if a preliminary draft plan of management has been notified under section 63—the final draft plan differs significantly from the preliminary draft plan.

(2) The proponent of the final draft plan must make copies of the final draft plan available—

(a) to an appropriate committee of the Legislative Assembly; and

(b) for public inspection during office hours at the places stated in a written notice (the ***public inspection notice***) prepared by the proponent.

(3) The public inspection notice must invite people to give written representations about the draft plan of management to the proponent at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is notified under the Legislation Act.

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(4) The public inspection notice is a notifiable instrument.

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

(5) The proponent of the final draft plan must also publish the public inspection notice in a daily newspaper.

324 Revision of draft plans of management

The proponent of a draft plan of management may revise the draft plan—

(a) after considering any written representations received about the draft plan; or

(b) to correct any formal error.

325 Giving draft plans of management to Minister

The proponent of a draft plan of management for an area of public land must give the draft plan (whether revised under section 324 or otherwise) to the Minister for approval, together with—

(a) a written report setting out the issues raised in any written comments given to the proponent in relation to the draft plan; and

(b) if the planning and land authority or conservator of flora and fauna made comments in relation to the area or the draft plan and the draft plan does not incorporate the comments—a written explanation of why the draft plan does not incorporate the comments; and

(c) a written report about the proponent's consultation with the public and with anyone else about the draft plan.

326 Consideration of draft plans of management by Legislative Assembly committee

(1) This section applies if the Minister is given a draft plan of management under section 325.

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(2) Not later than 5 working days after the day the Minister receives the draft plan of management, the Minister must give the following to an appropriate committee of the Legislative Assembly:

(a) a copy of the draft plan;

(b) a copy of the reports mentioned in section 325 relating to the draft plan.

327 Minister's powers on receiving draft plans of management

(1) This section applies if the Minister receives a draft plan of management given for approval under section 325 or section 328.

(2) The Minister must consider any recommendation relating to the draft plan of management made by a committee of the Legislative Assembly under section 326.

(3) The Minister must—

(a) in writing, approve the plan of management in the form given; or

(b) refer the draft plan to the proponent of the draft together with 1 or more of the following written directions:

(i) to conduct further stated consultation;

(ii) to consider any revision suggested by the Minister;

(iii) to revise the draft in a stated way;

(iv) to defer giving the draft to the Minister again until a stated date or the happening of a stated event;

(v) to withdraw the draft in writing.

Note A plan of management approved by the Minister is a disallowable instrument (see s 330).

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(4) The following are notifiable instruments:

(a) a deferral of a draft plan of management by the proponent of the draft plan in accordance with a direction under subsection (3) (b) (iv);

(b) a withdrawal of a draft plan of management by the proponent of the draft plan in accordance with a direction under subsection (3) (b) (v).

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

328 Referral of draft plans of management to proponent

If the Minister refers a draft plan of management to the proponent of the draft plan under section 327 (3) (b), the proponent must—

(a) if the Minister gives a direction under section 327 (3) (b) (i)—comply with the Minister's directions; and

(b) if the Minister gives a direction under section 327 (3) (b) (ii) or (iii)—revise the draft plan if the proponent considers appropriate; and

(c) revise the draft to correct any formal error; and

(d) submit the draft plan of management (as revised) to the Minister for approval together with a written report about—

(i) the proponent's compliance with the Minister's directions; and

(ii) any revision of the draft under paragraph (c).

329 Notice of revival of deferred draft plans of management

(1) This section applies if—

(a) the proponent of a draft plan of management defers the draft plan as directed under section 327 (3) (b) (iv) (Minister's powers on receiving draft plans of management); and

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(b) either—

(i) the day stated in the deferral for revival of the draft plan arrives; or

(ii) the event mentioned in the deferral for revival of the draft plan happens.

(2) The proponent of the draft plan of management must prepare a notice, on the day stated in the deferral, or as soon as possible after the event mentioned in the deferral, stating that the draft plan is revived.

(3) A notice is a notifiable instrument.

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

(4) The proponent of the draft plan of management must also publish the notice in a daily newspaper.

330 Plans of management—notification, presentation, disallowance and date of effect

(1) A plan of management approved by the Minister under section 327 is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(2) Subject to any disallowance under the Legislation Act, chapter 7, the plan of management commences—

(a) on the day after the 6th sitting day after the day the plan is presented to the Legislative Assembly under that chapter; or

(b) if the plan provides for a later date or time of commencement—on the later date or time.

331 Technical variations

(1) A technical variation of a plan of management in relation to an area of public land may be made by—

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(a) the custodian of land; or

(b) the conservator of flora and fauna with the agreement of the custodian.

(2) The technical variation is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) Subject to any disallowance under the Legislation Act, chapter 7, the technical variation of the plan of management commences—

(a) on the day after the 6th sitting day after the day the technical variation is presented to the Legislative Assembly under that chapter; or

(b) if the technical variation provides for a later date or time of commencement—on the later date or time.

(4) Not later than 5 working days after the day the technical variation is notified under the Legislation Act, the proponent must publish a notice in a daily newspaper that—

(a) describes the variation; and

(b) states the date of effect of the variation; and

(c) if the proponent considers it necessary or helpful—states where the variation and information about the variation is available for inspection.

332 Review of plans of management

(1) This section applies if there is a plan of management for an area of public land.

(2) The custodian of the land must—

(a) review the plan of management at least once every 10 years; and

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(b) if satisfied that the plan of management is no longer appropriate for the land—prepare a draft variation of the plan of management for the land (see s 321).

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Part 10.5 Custodianship map

333 What is a *custodian*?

A ***custodian*** for an area of land is an administrative unit or other entity with administrative responsibility for land in the ACT that is unleased land, public land or both.

Note ***Entity*** includes an unincorporated body and a person (including a person occupying a position) (see Legislation Act, dict, pt 1).

334 Custodianship map

(1) The planning and land authority must create and maintain a map (the ***custodianship map***) that identifies, and reflects who has administrative responsibility for land in the ACT that is unleased land, public land or both.

(2) The custodianship map may include anything else the planning and land authority considers appropriate.

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Part 10.6 Leases for public land

335 Definitions—pt 10.6

In this part:

defined period, in relation to future public land, means the period of interim effect under part 5.3 of the draft plan variation that designates the land to become public land.

future public land means land designated to become public land in a draft plan variation publicly notified under part 5.3.

336 Leases of public land—generally

The planning and land authority must not, except in accordance with section 337, grant a lease of—

(a) public land; or

(b) future public land during the defined period.

337 Grant of leases of public land

(1) On the written recommendation of the conservator of flora and fauna and the custodian, the planning and land authority may grant a lease of an area, or part of an area, of public land unless the area is reserved under the plan as a wilderness area.

(2) On the written recommendation of the conservator of flora and fauna and the custodian, the planning and land authority may, during the defined period, grant a lease of an area, or part of an area, of future public land unless it is proposed in the draft plan variation that designates the land to become public land that the area be reserved as a wilderness area.

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Part 10.7 Public land—miscellaneous

338 Miners' rights in relation to public land

A miner's right must not be granted in relation to public land.

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Chapter 11 Controlled activities

Notes to ch 11

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

Part 11.1 Interpretation—ch 11

339 Definitions

In this Act:

complainant—see section 341 (1) (b).

controlled activity means—

(a) an activity mentioned in schedule 2; or

(b) an activity, including an activity under another Act, prescribed by regulation.

controlled activity order means an order made under part 11.3.

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Part 11.2 Complaints about controlled activities

340 Who may complain?

(1) Anyone who believes a person is conducting, or has conducted, a controlled activity may complain to the planning and land authority.

Note A person is not required to make a complaint (see Legislation Act, s 146 (1)).

(2) The following are taken to be complaints made under this section:

(a) notice of a contravention given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work);

(b) a complaint referred to the planning and land authority under the *Construction Occupations (Licensing) Act 2004*, section 123 (Action after investigating complaint).

341 Form of complaints

(1) A complaint must—

(a) be in writing; and

(b) be signed by the person making the complaint (the ***complainant***); and

(c) include the complainant's name and a contact address; and

(d) identify the conduct complained about.

Examples of complaints in writing

1 emailed complaints

2 faxed complaints

3 complaints by mail

Examples of contact addresses

1 email address

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2 postal address

3 work address

4 home address

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) However, the planning and land authority—

(a) may accept a complaint for consideration even if it does not comply with subsection (1); and

(b) must accept a complaint for consideration even if it does not comply with subsection (1) if the complaint is notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

(3) If the planning and land authority accepts for consideration a complaint that is not in writing, the authority must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

342 Withdrawal of complaints

(1) A complainant may withdraw the complaint at any time by written notice to the planning and land authority.

(2) If the complainant withdraws the complaint, the planning and land authority—

(a) need take no further action on the complaint; but

(b) may continue to act on the complaint if the authority considers it appropriate to do so.

(3) Also, if the complainant withdraws the complaint, the planning and land authority need not report to the complainant under section 345 on the result of any action in relation to the complaint.

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343 Further information about complaints etc

(1) The planning and land authority may, at any time, require a complainant to give the authority further information about the complaint.

(2) When making a requirement under this section, the planning and land authority must give the complainant a reasonable period of time within which the requirement is to be satisfied and may extend that period.

(3) If the complainant does not comply with a requirement made of the complainant under subsection (1), the planning and land authority may, but need not, take further action in relation to the complaint.

(4) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

344 Investigation of complaints

The planning and land authority must take reasonable steps to investigate each complaint made in accordance with section 341.

345 Action after investigating complaints

(1) After investigating a complaint made under this part, the planning and land authority must do 1 or more of the following:

(a) if satisfied that no further action is necessary in relation to the complaint—give the complainant notice under subsection (2) and take no further action in relation to the complaint;

Note For what the authority must consider for par (a), see s 346.

(b) if satisfied that the complaint can be more appropriately dealt with by another entity—refer the complaint to the other entity under section 347;

Note See examples below.

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(c) if satisfied that the complaint contains evidence that suggests that a disciplinary ground exists in relation to a construction occupations licensee—refer the complaint to the construction occupations registrar;

(d) if sufficient grounds exist to give someone an information requirement—give someone an information requirement under section 395;

(e) take action under part 11.3 (Controlled activity orders) in relation to the conduct complained about;

(f) if grounds exist under a regulation to issue an infringement notice in relation to the conduct complained about—issue an infringement notice in relation to the conduct;

(g) if satisfied that it would be appropriate for rectification work to be done—direct a person to carry out rectification work under part 11.4 (Rectification work) in relation to the conduct complained about;

(h) if satisfied that it would be appropriate to give a prohibition notice in relation to the conduct complained about—give a prohibition notice under part 11.5 (Prohibition notices) in relation to the conduct;

(i) if satisfied that there are grounds for issuing an injunction in relation to the conduct complained about—apply to the Supreme Court for an injunction under part 11.6 (Injunctions, terminations and ending leases and licences) in relation to the conduct;

(j) take action under part 11.6 to terminate a lease or licence;

(k) take any other action the authority considers appropriate.

Examples—par (b)

1 the complaint is about a potential fire hazard and would be better dealt with by the emergency services authority

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2 the complaint is about a leasehold that is unclean because leftover chemicals are stored on it and would be better dealt with by the environment protection authority

3 the complaint is about a leasehold that is unclean because a person with a disability cannot make decisions about day-to-day living, and would be better dealt with by the public advocate

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) The planning and land authority must give the complainant written notice about the action the authority decides to take under subsection (1).

(3) To remove any doubt, the planning and land authority may take action under a provision mentioned in subsection (1) (c) to (j) even if—

(a) the authority is not acting on a complaint; or

(b) the complaint the authority is acting on has been withdrawn.

(4) In this section:

construction occupations licensee—

(a) means a person who is licensed under the *Construction Occupations (Licensing) Act 2004*; and

(b) in relation to conduct, includes a person who was licensed under that Act when the conduct happened.

disciplinary ground, in relation to a construction occupations licensee—see the *Construction Occupations (Licensing) Act 2004*, section 54.

rectification work—see section 365.

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346 When authority satisfied no further action on complaint necessary

(1) In considering whether no further action should be taken in relation to a complaint under section 345, the planning and land authority must consider whether the complaint—

(a) lacks substance; or

(b) is frivolous, vexatious or was not made honestly; or

(c) has been adequately dealt with.

Examples of complaints lacking substance—par (a)

1 the conduct complained about is not a controlled activity

2 the conduct complained about has development approval

3 the conduct complained about did not happen

Note 1 The planning and land authority may also take no further action on a complaint if the complainant has not complied with a requirement made under s 343 (1) (see s 343 (3)).

Note 2 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) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

347 Referral of complaints under s 345 (1) (b)

The planning and land authority refers a complaint to another entity by giving the other entity—

(a) a copy of the complaint or a summary of the information provided in the complaint; and

(b) any information relating to the complaint that the authority considers may be helpful to the entity; and

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(c) a statement about why the authority considers that the entity is more appropriate to deal with the complaint than the authority.

348 Use of information received and discovered

(1) This section applies to information in a complaint, or information found during the investigation of a complaint.

(2) To remove any doubt, the planning and land authority may use the information in deciding whether to make a controlled activity order, whether on the authority's own initiative or on application, under part 11.3.

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Part 11.3 Controlled activity orders

Division 11.3.1 Controlled activity orders on application

349 Meaning of *show cause notice*—div 11.3.1

In this division:

show cause notice—see section 350 (3).

350 Applications to authority for controlled activity orders

(1) A person may apply to the planning and land authority for a controlled activity order directed to 1 or more of the following:

(a) the lessee or occupier of premises 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.

Note A person is not required to make an application (see Legislation Act, s 146 (1)).

(2) The application must—

(a) be in writing signed by the applicant; and

(b) state the following:

(i) the applicant's name and a contact address;

(ii) a description of the matter about which the controlled activity order is sought;

(iii) whether the applicant has complained to the planning and land under part 11.2 about the matter;

(iv) the kind of order sought by the applicant;

(v) each person to whom the order sought is to be directed;

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(vi) the premises in relation to which the order is sought;

(vii) the grounds on which the order is sought.

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

(a) each person to whom the controlled activity 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 premises in relation to which the order is sought.

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

(4) The show cause 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, not later than 10 working days after the day the person is given the notice, give the planning and land authority written reasons explaining why the order should not be made.

(5) The show cause notice may also include any other information that the planning and land authority considers appropriate.

(6) To remove any doubt, a person is not prevented from applying for a controlled activity order only because the person has made a complaint in relation to the same matter.

351 Decision on application for controlled activity order

(1) Before deciding whether to make a controlled activity order on an application under section 350, the planning and land authority must consider any reasons given in accordance with the show cause notice.

(2) The planning and land authority may decide—

(a) to make a controlled activity order of the kind sought; or

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(b) to make a controlled activity order (including a different kind of order) that is not more burdensome than the order sought; or

(c) not to make a controlled activity order.

Example of less burdensome 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) A controlled activity 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 350 (3) (b)—that person.

(4) The planning and land authority is taken to have refused to make the controlled activity order applied for under section 350 if the authority fails to decide the application before the end of the period prescribed by regulation.

Note There may be a right of review for a decision under this section (see ch 13 and sch 1).

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Division 11.3.2 Controlled activity orders on authority's initiative

352 Meaning of *show cause notice*—div 11.3.2

In this division:

show cause notice—see section 353 (2).

353 Controlled activity orders on authority's own initiative

(1) This section applies if the planning and land authority proposes, on the authority's own initiative (whether because of a complaint under part 11.2 or otherwise), to make a controlled activity order directed to 1 or more of the following:

(a) the lessee or occupier of premises 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 (the ***show cause notice***) of the authority's intention to make a controlled activity order to—

(a) each person to whom the order is to be directed; and

(b) if different from the person or people mentioned in paragraph (a)—the lessee or occupier of the premises in relation to which the order is to apply.

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

(3) The show cause notice must—

(a) describe the controlled activity to which the notice relates; and

(b) state each person to whom a controlled activity order in relation to the activity would be directed.

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(4) Also, the show cause notice—

(a) must contain a statement to the effect that the person to whom it is given may, not later than 10 working days after the day the person is given the notice, give the planning and land authority written reasons explaining why the controlled activity order should not be made; and

(b) may include any other information that the authority considers appropriate.

354 Inaction after show cause notice

(1) This section applies if—

(a) the planning and land authority has given a show cause notice under this division; and

(b) the authority has not made a decision under section 355 in relation to the controlled activity order mentioned in the notice within the time prescribed by regulation.

(2) The planning and land authority is taken to have decided not to make the controlled activity order.

(3) Also, the planning and land authority must not make the controlled activity order unless the authority gives a further show cause notice in relation to the order.

355 Decision on proposed controlled activity order on authority's own initiative

(1) Before deciding whether to make a controlled activity order mentioned in a show cause notice, the planning and land authority must consider any reasons given in accordance with the show cause notice.

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(2) The planning and land authority may decide—

(a) to make a controlled activity order in relation to a controlled activity mentioned in the show cause notice; or

(b) not to make the controlled activity order mentioned in the show cause notice.

(3) A controlled activity order may be directed to 1 or more of the following:

(a) the person against whom the order mentioned in the show cause notice is directed;

(b) if the planning and land authority considers that the order would be more appropriately directed to someone else mentioned in section 353 (2) (b)—that person.

Division 11.3.3 Ongoing controlled activity orders

356 What is an *ongoing controlled activity order*?

An ***ongoing controlled activity order*** is a controlled activity order that—

(a) remains in force for a stated period of 2 or more years, but not longer than 5 years; and

(b) cannot be revoked on application by the person to whom the order is directed.

357 When can an ongoing controlled activity order be made?

(1) The planning and land authority may make an ongoing controlled activity order under division 11.3.1 (Controlled activity orders on application) or division 11.3.2 (Controlled activity orders on authority's initiative).

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(2) However, the planning and land authority must not make an ongoing controlled activity order unless—

(a) the controlled activity to which the order relates is failing to keep a leasehold clean; and

(b) the order is directed to a named person; and

(c) each person to whom the order is directed has contravened 2 or more controlled activity orders relating to failing to keep a leasehold clean in relation to the leasehold for which the ongoing controlled activity order is proposed to be made; and

(d) at least 2 of the contraventions by each person happened in the period of 5 years ending on the day the ongoing controlled activity order is made.

Example of order not against named person

an order directed to the occupier of the premises at 123 Happy Street

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).

Division 11.3.4 Provisions applying to all controlled activity orders

358 Content of controlled activity orders

(1) A controlled activity order must state—

(a) that it is a controlled activity order under this Act made by the planning and land authority; and

(b) each person to whom the order is directed; and

(c) the terms of the order and the premises in relation to which the order applies; and

(d) the grounds on which the order is made; and

(e) when the order takes effect; and

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(f) for an order other than an ongoing controlled activity order—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); and

(g) for an ongoing controlled activity order—

(i) when the order ends; and

(ii) that the order cannot be revoked on application.

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) A controlled activity 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) A controlled activity order may direct anyone to whom it is directed to do 1 or more of the following:

(a) not to begin a development without development approval;

(b) not to carry out a development without development approval;

(c) to comply with a lease provision or development agreement;

(d) to restore any land, or a building or structure on the land, that has been altered, damaged or fallen into disrepair in breach of a lease provision or development agreement;

(e) to comply with the terms of a development approval to undertake a development;

(f) to carry out a development in accordance with a condition under the development approval that approved the development;

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(g) to demolish a building or structure, or a part of a building or structure, that has been constructed without development approval or permission required under a territory law;

(h) 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;

(i) to restore any land, building or structure that has been altered without development approval or permission required under a territory law;

(j) to replace with an identical building or structure any building or structure that has been demolished without development approval or permission required under a territory law;

(k) to apply for development approval for a building or structure, or part of a building or structure, that has been constructed without development approval;

(l) to clean up a leasehold and keep it clean;

(m) if the person to whom the order is directed is bound by a land management agreement—to comply with the land management agreement;

(n) not to do anything that is a controlled activity whether or not a controlled activity order has been, or could be, made under paragraphs (a) to (m).

359 Notice of making of controlled activity orders

(1) If the planning and land authority makes a controlled activity 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;

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(c) the lessee or occupier of the premises in relation to which the order applies;

(d) the registrar-general;

(e) if the order relates to the pruning of a protected tree—the conservator of flora and fauna;

Note For restrictions on pruning etc of protected trees, see the *Tree Protection Act 2005*.

(f) anyone else whose interests the authority believes are adversely affected by the order.

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

(2) To remove any doubt, if a person is given a notice under section 408 in relation to the making of a controlled activity order, the person need not be given a separate notice under this section in relation to the making of the order.

(3) In this section:

protected tree—see the *Tree Protection Act 2005*, section 8.

360 Who is bound by a controlled activity order?

(1) A controlled activity order binds each person to whom it is directed.

(2) If a controlled activity order binds the lessee of the premises to which the order applies, unless the order otherwise provides, the order also binds anyone who becomes the lessee of the premises after the order is made to the same extent as if the order had been directed to that person.

(3) If a controlled activity order binds the occupier of the premises to which the order applies, unless the order otherwise provides, the order also binds anyone who becomes an occupier of the premises after the order is made to the same extent as if the order had been directed to that person.

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361 Contravening controlled activity orders

(1) A person commits an offence if—

(a) the planning and land authority makes a controlled activity 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 2, 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.

362 Notice of appeal against controlled activity orders

(1) This section applies if—

(a) a person complains about conduct under part 11.2; and

(b) because of the complaint, or investigations arising from the complaint, the authority makes a controlled activity order directed to a person (the ***directed person***); and

(c) the directed person appeals to the ACAT for review of the decision to make the order.

(2) The planning and land authority must tell the complainant in writing about the appeal.

363 Ending controlled activity orders

(1) A controlled activity order operates until it is revoked or ends in accordance with the order.

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(2) A person who is bound by a controlled activity order other than an ongoing controlled activity 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 controlled activity order is sought.

(4) The planning and land authority may revoke the controlled activity order if satisfied, on reasonable grounds, that the order is no longer necessary or appropriate.

364 Notice ending controlled activity orders

(1) If a controlled activity 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 a controlled activity order, the authority must give written notice of the revocation to each person given notice of the making of the order under section 359 (1).

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Part 11.4 Rectification work

Note to pt 11.4

An authorised person, and anyone assisting the authorised person, must take reasonable steps to minimise damage when exercising a function under this chapter (see s 413). The Territory may be liable to pay compensation for any damage caused (see s 414).

365 Definitions—pt 11.4

In this part:

authorised person—see section 368 (1).

rectification work—

(a) means—

(i) work in relation to premises where a controlled activity is being conducted to ensure compliance with the development approval for the activity; or

(ii) the conduct of an activity required under a controlled activity order that was not carried out within the period stated in the order; and

(b) in relation to an authorised person—means the rectification work the authorised person is authorised to carry out.

366 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 premises where the activity was or is being conducted;

(b) anyone by whom or on whose behalf the activity was or is being conducted.

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(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 premises to which the direction applies.

Note For how documents may be given, see the 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 premises in relation to which the direction applies; and

(d) the rectification work required; and

(e) the grounds on which the direction is given; and

(f) that the rectification work must be completed not later than 5 working 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 by the end of 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 chapter has been begun or is about to begin.

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367 Contravening direction to carry out rectification work

(1) A person commits an offence if—

(a) the planning and land authority directs the person to carry out rectification work in relation to a controlled activity; and

(b) the person is given notice of the direction; and

(c) the person contravenes the direction.

Maximum penalty: 60 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.

368 Authorisation to carry out rectification work

(1) The planning and land authority may authorise a person (an ***authorised person***) to enter the premises to which a direction under section 366 (Direction to carry out rectification work) applies to carry out the rectification work required by the notice under that section if the work is not completed by the end of the period stated in the notice.

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

(a) until the end of the period for making an application to the ACAT 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 ACAT for review of the decision to make the order to which the rectification work relates—unless the decision is upheld or the application is withdrawn.

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369 Obligation and powers of authorised people

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

(2) The authorised person may do anything required to carry out the rectification work including, for example, the following:

(a) construction work;

(b) alteration;

(c) demolition;

(d) remove earth, fixtures and construction material;

(e) remove anything else, like car bodies, vegetation and machinery, that has to be removed to clean up a leasehold.

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) Anything removed from premises to carry out rectification work—

(a) is not required to be returned; and

(b) may be disposed of.

370 Rectification work by authorised people

(1) An authorised person may enter premises where rectification work is to be carried out—

(a) during business hours with the consent of an occupier; or

(b) in accordance with a rectification work order.

Note An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 391B.

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(2) An authorised person who enters premises may remain at, and re-enter, the premises to carry out the rectification work during business hours, or at another time authorised by a rectification work order, whether or not the inspector remains at the premises.

Note 1 ***Business hours***—see the dictionary.

Note 2 If entry is made under a rectification work order, see s 402G for re-entry to the premises.

(3) However—

(a) an authorised person must not enter premises for the first time unless accompanied by an inspector; and

(b) if the authorised person enters or re-enters the premises with consent under subsection (1) (a), the person must leave the premises if an occupier withdraws consent to the person being on the premises.

371 Liability for cost of rectification work

The person who is required to comply with a direction under section 366 (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).

372 Criteria for deferral of rectification work costs

(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 is a notifiable instrument.

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

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373 Application for deferral of rectification work costs

(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.

374 Deferral of rectification work costs

(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 372 (1) exists in relation to the lessee.

Note Interest is payable on the deferred amount, see s 375.

(2) The planning and land authority may make a declaration under subsection (1) on its own initiative or on application under section 373.

(3) The declaration must state—

(a) the leasehold to which the declaration relates; and

(b) the amount of the cost of the rectification work deferred.

375 Security for deferred rectification work costs

(1) The planning and land authority must—

(a) lodge a copy of a declaration under section 374 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.

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(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 374 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).

376 Payment of deferred rectification work costs

(1) If the full amount of the charge mentioned in section 375 (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.

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376A Protection of authorised people from liability

(1) An authorised person does not incur civil liability for rectification work carried out in accordance with the directions of an inspector.

(2) A civil liability that would, apart from this section, attach to the authorised person attaches instead to the Territory.

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Part 11.5 Prohibition notices

377 Giving prohibition notices

(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—

(a) to prevent an entity starting, or continuing, to undertake prohibited development; or

(b) to prevent an entity from continuing to undertake development if—

(i) the entity has started to undertake the development; and

(ii) the development requires development approval; and

(iii) there is no development approval for the development; or

(c) to prevent an entity from continuing to undertake development other than in accordance with the conditions of a development approval if—

(i) the entity has started to undertake a development; and

(ii) there is development approval for the development; and

(iii) the development undertaken is not in accordance with the conditions of the development approval.

(2) Also, this section applies to an activity under subsection (1) whether or not—

(a) a controlled activity order has been made, or is proposed to be made, in relation to the activity; or

(b) a proceeding for an offence against this chapter in relation to the activity has begun or is about to begin.

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(3) The planning and land authority may give a prohibition notice to 1 or both of the following:

(a) the lessee or occupier of premises to which the activity mentioned in subsection (1) relates;

(b) an entity by which or on behalf of which the activity—

(i) was, is being, or is to be, conducted; or

(ii) is likely to be conducted.

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

(4) The prohibition notice must state—

(a) that it is a prohibition notice under this Act; and

(b) each entity to which it is directed; and

(c) that the notice takes effect when it is given to an entity to which it is directed; and

(d) the grounds on which the notice is given; and

(e) the activity, and the premises, in relation to which the notice applies; and

(f) that the activity—

(i) must not be carried on by the entity; or

(ii) must not be carried on by the entity 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 an entity to which it is directed.

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(6) To remove any doubt, 2 or more prohibition notices may be given in relation to the same activity.

378 Contravening prohibition notices

(1) A person commits an offence if—

(a) the planning and land authority gives a prohibition notice to the person; and

(b) the notice is directed to the person; and

(c) the notice states that an activity must not be carried on by the person in relation to premises; and

(d) the person carries on the activity in relation to the premises.

Maximum penalty: 60 penalty units.

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 planning and land authority gives a prohibition notice to the person; and

(b) the notice is directed to the person; and

(c) the notice states that an activity must not be carried on by the person in relation to premises except in accordance with the notice; and

(d) the person carries on the activity in relation to the premises otherwise than in accordance with the notice.

Maximum penalty: 60 penalty units.

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

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379 Ending prohibition notices

(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) the notice ends in accordance with the notice;

(b) the notice is revoked.

380 Application for revocation of prohibition notices

(1) 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.

(2) The application must state the grounds on which the revocation of the prohibition notice is sought.

(3) The planning and land authority may revoke the prohibition notice if satisfied, on reasonable grounds, that the notice is no longer necessary or appropriate.

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Part 11.6 Injunctions, terminations and ending leases and licences

381 Injunctions to restrain contravention of controlled activity orders and 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 a controlled activity order or 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 satisfied that 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.

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(5) This section applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

382 Termination of leases

(1) This section applies if—

(a) a lessee contravenes this chapter or the lease; and

(b) the planning and land authority has complied with section 384 in relation to the lessee.

(2) The planning and land authority may, by written notice (a ***termination notice***) given to the lessee, terminate the lease.

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

(3) A termination notice takes effect 10 working days after the day the notice is given.

(4) At the same time as, or as soon as practicable after, the termination notice is given to the lessee, the planning and land authority must give a copy of the termination notice to—

(a) the registrar-general; and

(b) any person having an interest in the land comprised in the lease that is registered under the *Land Titles Act 1925*.

(5) The validity of the termination of a lease is not affected by a failure to comply with subsection (4).

383 Termination of licences

(1) This section applies if—

(a) a person who occupies territory land under a licence from the Commonwealth or the Territory contravenes this chapter or the licence; and

(b) the planning and land authority has complied with section 384 in relation to the licensee.

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(2) The planning and land authority may, by written notice given to the licensee, terminate the licence.

(3) A notice under subsection (2) takes effect 5 working days after the day the notice is served.

384 Notice of termination

The planning and land authority must not terminate a lease or a licence under this part unless it has—

(a) by written notice given to the lessee or licensee—

(i) informed the lessee or licensee that it is considering terminating the lease or licence; and

(ii) stated the grounds on which it is considering taking that action; and

(iii) invited the lessee or licensee to tell the authority in writing not later than 15 working days after the day the lessee or licensee receives the notice why the lessee or licensee considers that the lease or licence should not be terminated; and

(b) for the termination of a lease—given a copy of the notice under paragraph (a) to each person with a registered interest in the lease; and

(c) taken into account any reasons for not terminating the lease or licence given to the authority by the lessee or licensee in accordance with the notice served on the lessee or licensee under paragraph (a).

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Part 11.7 Controlled activities—miscellaneous

385 Victimisation etc

(1) A person (the ***first person***) commits an offence if the first person causes or threatens to cause a detriment to someone else (the ***other person***) because—

(a) the other person has made—

(i) a complaint under part 11.2; or

(ii) an application for a controlled activity order under part 11.3; or

(b) the first person believes that the other person intends to do something mentioned in paragraph (a).

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

(2) A person commits an offence if the person threatens or intimidates someone else with the intention of causing the other person—

(a) not to make—

(i) a complaint under part 11.2; or

(ii) an application under part 11.3; or

(b) to withdraw a complaint made under part 11.2.

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

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Chapter 12 Enforcement

Notes to ch 12

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

Part 12.1 General

386 Definitions—ch 12

In this chapter:

connected—a thing is ***connected*** with an offence if—

(a) the offence has been committed in relation to it; or

(b) it will provide evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

(a) a person believed, on reasonable grounds, to be an occupier of the premises; and

(b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

premises includes land.

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Part 12.2 Inspectors

387 Appointment of inspectors

The planning and land authority may appoint a public servant as an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see the 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).

388 Identity cards

(1) The planning and land authority must give a person appointed as an inspector an identity card stating the person's name and that the person is an inspector.

(2) The identity card must show—

(a) a recent photograph of the person; and

(b) the card's date of issue and expiry; and

(c) anything else prescribed by regulation.

(3) A person commits an offence if—

(a) the person stops being an inspector; and

(b) the person does not return the person's identity card to the planning and land authority as soon as practicable, but no later than 5 working days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

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

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Part 12.3 Powers of inspectors

Note to pt 12.3

An inspector, and anyone assisting the inspector, must take reasonable steps to minimise damage when exercising a function under this chapter (see s 413). The Territory may be liable to pay compensation for any damage caused (see s 414).

389 Power to enter premises

(1) For this Act, an inspector may—

(a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or

(b) for entry without an authorised person—at any time, enter premises with the occupier's consent; or

(c) for entry with an authorised person—enter the premises during business hours with the occupier's consent; or

Note An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 391B.

(d) enter premises with an authorised person in accordance with a rectification work order; or

(e) enter premises in accordance with a search warrant or monitoring warrant.

(2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.

(3) An inspector may, without the consent of the occupier of premises, enter land around the premises to—

(a) ask for consent to enter the premises; or

(b) give notice under section 391B.

(4) To remove any doubt—

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(a) an inspector may enter premises under subsection (1) without payment of an entry fee or other charge; and

(b) for subsection (3), it does not matter whether someone is on the premises or not when the inspector enters.

390 Production of identity card

An inspector must not remain at premises entered under this part if the inspector does not produce his or her identity card when asked by the occupier.

391 Consent to entry without authorised person

(1) When seeking the consent of an occupier of premises to enter premises under section 389 (1) (b), an inspector must—

(a) produce his or her identity card; and

(b) tell the occupier—

(i) the purpose of the entry; and

(ii) that the occupier may refuse consent to enter the premises; and

(iii) that the occupier may withdraw consent to remain at the premises.

(2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***)—

(a) that the occupier was told—

(i) the purpose of the entry; and

(ii) that the occupier may refuse consent to enter the premises; and

(iii) that the occupier may withdraw consent to remain at the premises; and

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(b) that the occupier consented to the entry; and

(c) stating the time and date when consent was given.

(3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(4) A court must find that the occupier did not consent to the inspector entering or remaining at the premises under this part if—

(a) the question arises in a proceeding in the court whether the occupier consented; and

(b) an acknowledgment of consent is not produced in evidence; and

(c) it is not proved that the occupier consented.

391A Consent to entry with authorised person

(1) This section applies to an inspector seeking the consent of an occupier to enter premises under section 389 (1) (c).

Note The inspector may, without consent, enter land around the premises to ask for consent to enter the premises (see s 389 (3)).

(2) The inspector must, during business hours—

Note ***Business hours***—see the dictionary.

(a) produce his or her identity card; and

(b) tell the occupier that—

(i) the planning and land authority gave a direction for rectification work to be done at the premises; and

(ii) notice of the direction was given under section 366; and

(iii) the rectification work has not been carried out in accordance with the notice; and

(iv) a person has been authorised to carry out the rectification work; and

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(v) entry is sought to allow the authorised person to carry out the rectification work; and

(vi) the authorised person is accompanying the inspector; and

(vii) the inspector may, but need not, remain at the premises to give directions to the authorised person; and

(viii) the authorised person may return during business hours as required to complete the work; and

(ix) the occupier may refuse consent to enter the premises; and

(x) the occupier may withdraw consent to remain at the premises.

(3) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***)—

(a) that the occupier was told that—

(i) the planning and land authority gave a direction for rectification work to be done at the premises; and

(ii) notice of the direction was given under section 366; and

(iii) the rectification work has not been carried out in accordance with the notice; and

(iv) a person has been authorised to carry out the rectification work; and

(v) entry is sought to allow the authorised person to carry out the rectification work; and

(vi) the authorised person is accompanying the inspector; and

(vii) the inspector may, but need not, remain at the premises to give directions to the authorised person; and

(viii) the authorised person may return during business hours as required to complete the work; and

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(ix) the occupier may refuse consent to enter the premises; and

(x) the occupier may withdraw consent to remain at the premises; and

(b) that the occupier consented to the entry; and

(c) stating the time and date when consent was given.

(4) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(5) A court must find that the occupier did not consent to the inspector entering or remaining at the premises under this part if—

(a) the question arises in a proceeding in the court whether the occupier consented; and

(b) an acknowledgment of consent is not produced in evidence; and

(c) it is not proved that the occupier consented.

391B Entry on notice for rectification work and monitoring

(1) This section applies to an inspector proposing to enter premises—

(a) under section 389 (1) (b) to check whether a controlled activity has happened, or is happening, in relation to the premises; or

(b) under section 389 (1) (b) to check whether 1 or more of the following in relation to the premises is being complied with:

(i) a controlled activity order;

(ii) a direction under section 366 to carry out rectification work;

(iii) a prohibition notice;

(iv) an injunction; or

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(c) with an authorised person under section 389 (1) (c).

(2) The planning and land authority may give an occupier of the premises written notice (an ***intention to enter notice***) of the inspector's intention to enter the premises.

(3) An intention to enter notice—

(a) must be given to the occupier at least 2 working days before the proposed entry; and

(b) may be given to the occupier without first asking for the occupier's consent to enter the premises.

(4) An intention to enter notice, for a proposed entry mentioned in subsection (1) (a) or (b), must state—

(a) the reason for the proposed entry; and

(b) when the inspector proposes to enter the premises; and

(c) that the occupier may refuse consent for the inspector or authorised person to enter the premises; and

(d) that the occupier may withdraw consent for the inspector or authorised person to remain at the premises.

(5) An intention to enter notice, for a proposed entry mentioned in subsection (1) (c), must state—

(a) that—

(i) the planning and land authority gave a direction for rectification work to be done at the premises; and

(ii) notice of the direction was given under section 366; and

(iii) the rectification work has not been carried out in accordance with the notice; and

(iv) a person has been authorised to carry out the rectification work; and

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(v) the inspector proposes to enter the premises with an authorised person to allow the authorised person to carry out the rectification work; and

(vi) the inspector may, but need not, remain at the premises to give directions to the authorised person; and

(vii) the occupier may refuse consent for the inspector or authorised person to enter the premises; and

(viii) the occupier may withdraw consent for the inspector or authorised person to remain at the premises; and

(b) when, during business hours, the work is proposed to be carried out.

Note ***Business hours***—see the dictionary.

(6) Before an inspector enters the premises in accordance with the intention to enter notice, the inspector must—

(a) tell the occupier that—

(i) the inspector proposes to enter the premises with an authorised person to allow the authorised person to carry out the rectification work to which the notice relates; or

(ii) the inspector proposes to enter the premises to check whether a controlled activity has happened, or is happening; or

(iii) the inspector intends to enter the premises to check compliance in accordance with the notice; and

(b) tell the occupier that, if the occupier does not consent to the inspector or authorised person entering, or remaining at, the premises, an application may be made to a court for a rectification work order or a monitoring warrant; and

(c) give the occupier a copy of the notice.

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(7) If an inspector gives the occupier an intention to enter notice, the inspector must ask the occupier to sign a written acknowledgment that the occupier was told that—

(a) the inspector—

(i) proposes to enter the premises with an authorised person to allow the authorised person to carry out the rectification work to which the notice relates; or

(ii) proposes to enter the premises to check whether a controlled activity has happened, or is happening; or

(iii) intends to enter the premises to check compliance in accordance with the notice; and

(b) if the occupier does not consent to the inspector or authorised person entering, or remaining at, the premises, an application may be made to a court for a rectification work order or a monitoring warrant.

(8) If the occupier signs an acknowledgment under subsection (7), the inspector must immediately give a copy to the occupier.

392 General powers on entry to premises

(1) An inspector who enters premises under this chapter may, for this Act, do 1 or more of the following in relation to the premises, or anything at the premises:

(a) inspect or examine;

(b) take measurements or conduct tests;

(c) take photographs, films, or audio, video or other recordings, or make sketches;

(d) ask the occupier, or anyone at the premises—

(i) to give the inspector information; or

(ii) to produce documents to the inspector; or

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(iii) to give the inspector reasonable help to exercise a power under this chapter.

Note 1 An inspector who enters premises under a search warrant may also exercise power under s 392B, s 392C and s 392D. An inspector who enters premises under a monitoring warrant may also exercise powers under s 392B and s 392D. See also s (3) in relation to the exercise of power under warrants.

Note 2 The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

(2) However, an inspector must not exercise a power under subsection (1) unless the inspector believes on reasonable grounds that the exercise relates to 1 or more of the following:

(a) a controlled activity or possible controlled activity;

(b) a prohibition notice;

(c) a direction under section 366 to carry out rectification work;

(d) an injunction under section 381;

(e) an offence or possible offence, or a thing or activity connected with an offence or possible offence, against this Act.

(3) However, if the inspector enters the premises under a search warrant or monitoring warrant, the inspector may only exercise a power under subsection (1) in relation to a matter mentioned in subsection (2) if the warrant relates to the matter.

(4) This section does not apply to an inspector who enters premises under section 389 (1) (c) or (d).

Note An inspector who enters premises under s 389 (1) (c) or (d) has power under s 392A.

392A Power on entry for rectification work

An inspector who enters premises under section 389 (1) (c) or (d) may, for this Act, give directions to the authorised person carrying out rectification work about how the work is to be carried out.

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392B Power to require help on entry under warrant

(1) An inspector who enters premises under a search warrant or monitoring warrant may require the occupier, or anyone at the premises, to give the inspector reasonable help to exercise a power under this chapter.

Note For other powers of inspectors under warrants, see s 389, s 392C, s 392D, pt 12.5A and pt 12.5B.

(2) A person commits an offence if the person fails to take all reasonable steps to comply with a requirement made of the person under subsection (1).

Maximum penalty: 50 penalty units.

(3) An offence against subsection (2) is a strict liability offence.

392C Power to take samples on entry under warrant

(1) An inspector who enters premises under a search warrant or monitoring warrant may take samples of anything the inspector believes on reasonable grounds is connected with the matter to which the warrant relates.

Note For other powers of inspectors under warrants, see s 389, s 392B, s 392D, pt 12.5A and pt 12.5B.

(2) The inspector must—

(a) ensure that the sample allows paragraph (c) to be complied with; and

(b) give a receipt for the sample to the occupier of the place from where the sample was taken; and

(c) divide the sample into 2 parts as nearly as practicable identical in size and composition to each other and each suitable for the purpose of analysis; and

(d) place each part in a separate container and seal the containers; and

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(e) attach to each container a label that is signed by the inspector and states the date and time when, and the place where, the sample was taken; and

(f) give 1 of the containers to the occupier.

392D Power to seize things on entry under search warrant

An inspector who enters premises under a search warrant may seize anything at the premises that the inspector is authorised to seize under the warrant.

Note For other powers of inspectors under warrants, see s 389, s 392B, s 392C, pt 12.5A and pt 12.5B.

393 Power to require name and address

(1) An inspector may require a person to state the person's name and home address if the inspector believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) The inspector must tell the person the reason for the requirement and, as soon as practicable, record the reason.

(3) The person may ask the inspector to produce his or her identity card for inspection by the person.

(4) A person must comply with a requirement made of the person under subsection (1) if the inspector—

(a) tells the person the reason for the requirement; and

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(b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

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

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Part 12.4 Information requirements

395 Information requirements

(1) This section applies if the planning and land authority suspects on reasonable grounds that a person—

(a) has knowledge of information (the ***required information***) reasonably required by the authority for the administration or enforcement of this Act; or

(b) has possession or control of a document containing the required information.

(2) The planning and land authority may give the person a notice (an ***information requirement***) requiring the person to give the information, or produce the document, to the authority.

(3) The information requirement must be in writing and must include details of the following:

(a) the identity of the person to whom it is given;

(b) why the information is required;

(c) the time by which the notice must be complied with;

(d) the operation of section 397.

(4) A person does not incur any civil or criminal liability only because the person gives information, or produces a document, to the planning and land authority in accordance with an information requirement.

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395A Authority may ask for information from commissioner for revenue in certain cases

(1) This section applies if the planning and land authority may or must notify, or intends to take action under this Act in relation to, an uncontactable person or a person the authority reasonably believes is an uncontactable person.

Examples

1 giving a person notice of the making of a development application under div 7.3.4 (Public notification of development applications and representations)

2 giving a person who made a representation about a development application notice of the approval of the application

3 action under—

(a) s 312 (How land may be recovered if former lessee or licensee in possession); or

(b) ch 11 (Controlled activities); or

(c) ch 12 (Enforcement).

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) The planning and land authority may, in writing, ask the commissioner for revenue for either of the following:

(a) the person's name;

(b) the person's home address or other contact address.

(3) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (2).

Note See also the *Taxation Administration Act 1999*, s 97 (c) for power to disclose the information.

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(4) In this section:

uncontactable person—a person is an ***uncontactable person*** if the planning and land authority does not have, or only has incomplete or outdated information about, either of the following:

(a) the person's name;

(b) a contact address for the person.

395B Authority may ask for information about leases from commissioner for revenue

(1) The planning and land authority may, in writing, ask the commissioner for revenue for the following information in relation to a lease:

(a) the lessee's name;

(b) the lessee's home address or other contact address.

Note 1 The Information Privacy Principles apply to the planning and land authority (see *Privacy Act 1988* (Cwlth), s 14 to s 16).

Note 2 The planning and land authority may ask the commissioner for information in relation to more than 1 lease at a time. Words in the singular include the plural (see Legislation Act, s 145 (b)).

(2) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (1).

Note See also the *Taxation Administration Act 1999*, s 97 (c) for power to disclose the information.

(3) The planning and land authority must not make a request under subsection (1) in relation to a lease more often than—

(a) once every 3 months; or

(b) if a regulation prescribes a longer period—once each period.

(4) Nothing in this section prevents the planning and land authority from asking for information under section 395A.

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(5) In this section:

lease—see section 235.

lessee—see section 234.

396 Treatment of documents provided under information requirement

(1) The planning and land authority must return a document produced in accordance with an information requirement to the person who produced the document as soon as practicable.

(2) To remove any doubt, before returning the document, the planning and land authority may make copies of, or take extracts from, the document.

397 Contravention of information requirements

A person commits an offence if the person intentionally contravenes a requirement of an information requirement.

Maximum penalty: 100 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and legal professional privilege.

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Part 12.5 Search warrants

398 Warrants generally

(1) An inspector may apply to a magistrate for a warrant to enter premises.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 14 days.

(5) The warrant must state—

(a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this chapter; and

(b) the offence for which the warrant is issued; and

(c) the things that may be seized under the warrant; and

(d) the hours when the premises may be entered; and

(e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

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399 Warrants—application made other than in person

(1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.

(5) If it is not practicable to fax a copy to the inspector—

(a) the magistrate must—

(i) tell the inspector the terms of the warrant; and

(ii) tell the inspector the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(6) The faxed copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this chapter.

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(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find that a power exercised by the inspector was not authorised by a warrant under this section if—

(a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a warrant under this section.

400 Search warrants—announcement before entry

(1) An inspector must, before anyone enters premises under a search warrant—

(a) announce that the inspector is authorised to enter the premises; and

(b) give anyone at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

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(2) The inspector is not required to comply with subsection (1) if the inspector believes, on reasonable grounds, that immediate entry to the premises is required to ensure—

(a) the safety of anyone (including the inspector or any person assisting); or

(b) that the effective execution of the warrant is not frustrated.

401 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the inspector or a person assisting must make available to the person—

(a) a copy of the warrant; and

(b) a document setting out the rights and obligations of the person.

402 Occupier entitled to be present during search etc

(1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.

(2) However, the person is not entitled to observe the search if—

(a) to do so would impede the search; or

(b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

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Part 12.5A Rectification work orders

402A Definitions—pt 12.5A

In this part:

remote application means an application for a rectification work order made other than in person.

remote order means a rectification work order made on remote application.

402B Meaning of *rectification work order*—Act

In this Act:

rectification work order means an order made under this part.

402C When may inspector apply for rectification work order?

An inspector may apply for a rectification work order to authorise entry to premises to carry out rectification work if—

(a) the planning and land authority gave a direction for rectification work to be done at the premises; and

(b) notice of the direction was given under section 366; and

(c) the rectification work has not been carried out in accordance with the notice; and

(d) a person has been authorised to carry out the rectification work; and

(e) 1 or more of the following circumstances exists in relation to the premises:

(i) the rectification work proposed cannot reasonably be undertaken, or consent to entry cannot be obtained, during business hours;

Note ***Business hours***—see the dictionary.

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(ii) an inspector, or an accompanying authorised person, has been refused entry in accordance with an intention to enter notice given under section 391B;

(iii) a consent to the entry of an inspector or an accompanying authorised person to carry out the rectification work has been withdrawn;

(iv) a consent to the entry or re-entry of an authorised person to carry out or complete the rectification work has been withdrawn.

402D Application for rectification work order generally

Note An application may be made remotely (see s 402H).

An application for a rectification work order must be sworn and state—

(a) the grounds on which the applicant relies to make the application; and

(b) why the order is sought; and

(c) if the order sought is for rectification work to be carried out at stated times outside business hours—why the work needs to be carried out at the stated times; and

Note ***Business hours***—see the dictionary.

(d) whether police assistance, or any other assistance, is likely to be needed to execute the order; and

(e) if the application is made other than in person—why the application is being made other than in person.

402E Decision on application for rectification work order

(1) A magistrate may refuse to consider an application for a rectification work order (whether a remote application or otherwise)

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until the inspector gives the magistrate any further information the magistrate requires for subsection (2).

(2) The magistrate must not make the rectification work order unless satisfied that—

(a) there are grounds for making the application; and

Note The grounds for making the application are set out in s 402C.

(b) if the order authorises rectification work to be carried out at stated times outside business hours—that it is reasonably necessary for the work to be carried out at the stated times; and

(c) if the application states that assistance is likely to be necessary to execute the order—that the assistance mentioned in the application is reasonably necessary to execute the order; and

(d) if the application is made other than in person—that the application has been made in accordance with section 402H (Rectification work order—remote application).

(3) A rectification work order may not be made in relation to an inspector other than the applicant.

(4) However, a rectification work order may authorise another inspector to accompany the applicant to execute the order.

402F Content of rectification work order

A rectification work order must state the following:

(a) the address of the premises to which the order relates;

(b) the name of the inspector authorised to enter the premises;

(c) the name of the authorised person authorised to enter the premises with the inspector;

(d) that the inspector and authorised person may use reasonable force to enter the premises;

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(e) if the order authorises using assistance in executing the order—the assistance that may be used in executing the order;

(f) that entry is authorised during business hours or, if authorised outside business hours, at stated times outside business hours;

(g) the date, not later than 4 working days after the day the order is made, when the rectification work must be begun.

402G Authorisation by rectification work order

A rectification work order authorises—

(a) the carrying out of the rectification work to which the order applies; and

(b) the stated inspector to enter premises in accordance with the order; and

(c) the stated authorised person to enter premises in accordance with the order if accompanied by the inspector; and

(d) if the order authorises assistance—the inspector and authorised person to enter with assistance in accordance with the order; and

(e) the inspector to remain on the premises, or to re-enter the premises, to give directions to the authorised person; and

(f) the authorised person—

(i) to remain on the premises to carry out the rectification work, whether or not the inspector remains on the premises; and

(ii) to re-enter the premises to complete the rectification work.

Note Also, an inspector may require a person's name and address for a believed contravention of this Act (see s 393).

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402H Rectification work order—remote application

(1) An inspector may apply for a rectification work order in relation to premises by phone, fax, radio or other form of communication if the inspector considers it necessary because consent to the inspector's entry to the premises has been withdrawn while the inspector was on the premises.

(2) Before applying for the rectification work order, the inspector must prepare an application in accordance with section 402D.

(3) However, the inspector may apply for the remote order before the application is sworn.

402I Rectification work order—after order made on remote application

(1) After making a rectification work order on a remote application, the magistrate must immediately fax a copy to the inspector who made the application if it is practicable to do so.

(2) If it is not practicable to fax a copy of the rectification work order to the inspector—

(a) the magistrate must—

(i) tell the inspector the order's terms; and

(ii) tell the inspector the date and time the order was issued; and

(b) the inspector must complete a form of order (the ***rectification work order form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the order; and

(iii) the order's terms.

(3) The inspector must, at the first reasonable opportunity, send to the magistrate—

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(a) the sworn application; and

(b) if the inspector completed a rectification work order form—the completed rectification work order form.

(4) On receiving the documents, the magistrate must attach them to the rectification work order.

(5) A court must find that a power exercised by the inspector was not authorised by a rectification work order made on a remote application if—

(a) the question arises in a proceeding in the court whether the exercise of power was authorised by a rectification work order; and

(b) the order is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a remote order.

402J Entry under rectification work order—no occupier present

(1) This section applies if—

(a) an inspector proposes to enter premises as authorised by a rectification work order; and

(b) the inspector believes on reasonable grounds that no occupier is present at the premises.

(2) The inspector, and anyone authorised under the order to provide assistance, may enter the premises using reasonable force in accordance with the order.

402K Entry under rectification work order—occupier present

(1) This section applies if—

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(a) an inspector proposes to enter premises as authorised by a rectification work order; and

(b) an occupier is present at the premises.

(2) The inspector must—

(a) produce his or her identity card to the occupier; and

(b) give the occupier a copy of the rectification work order; and

(c) tell the occupier that, under the order—

(i) the authorised person accompanying the inspector is authorised to carry out rectification work under the order; and

(ii) the inspector may, but need not, remain on the premises to give directions to the authorised person; and

(d) tell the occupier that—

(i) hindering the inspector or authorised person may be an offence; and

(ii) the inspector and anyone authorised under the order to provide assistance may use reasonable force to enter if entry is refused.

(3) The inspector, and anyone authorised under the order to provide assistance, may enter the premises using reasonable force in accordance with the order.

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Part 12.5B Monitoring warrants

402L Definitions—pt 12.5B

In this part:

remote application means an application for a monitoring warrant made other than in person.

remote warrant means a monitoring warrant made on remote application.

warrant form—see section 402T (2) (b).

402M Meaning of *monitoring warrant*—Act

In this Act:

monitoring warrant means a warrant issued under this part.

402N When may inspector apply for monitoring warrant?

An inspector may apply for a monitoring warrant in relation to premises if—

(a) any of the following apply:

(i) the inspector believes on reasonable grounds that a controlled activity has happened, or is happening, at the premises;

(ii) there is a controlled activity order in relation to a controlled activity at the premises;

(iii) there is a prohibition notice in relation to the premises;

(iv) a direction has been given under section 366 to carry out rectification work at the premises;

(v) an injunction under section 381 is in force in relation to the premises; and

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(b) any of the following apply:

(i) an inspector has been refused entry in accordance with an intention to enter notice given under section 391B;

(ii) the occupier—

(A) is given an intention to enter notice under section 391B; and

(B) consents to the entry of an inspector in accordance with the notice; and

(C) withdraws the consent.

402O Application for monitoring warrant generally

Note An application may be made remotely (see s 402S).

An application for a monitoring warrant must be sworn and state—

(a) the grounds on which the applicant relies to make the application; and

(b) why the warrant is sought; and

(c) whether police assistance, or any other assistance, is likely to be needed to execute the warrant; and

(d) if the application is made other than in person—why the application is being made other than in person.

402P Decision on application for monitoring warrant

(1) A magistrate may refuse to consider an application for a monitoring warrant (whether a remote application or otherwise) until the inspector gives the magistrate any further information the magistrate requires for subsection (2).

(2) The magistrate must not issue the monitoring warrant unless satisfied that—

(a) there are grounds for making the application; and

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Note The grounds for making the application are set out in s 402N.

(b) if the application states that assistance is likely to be necessary to execute the warrant—that the assistance mentioned in the application is reasonably necessary to execute the warrant; and

(c) if the application is made other than in person—that the application has been made in accordance with section 402S (Monitoring warrant—remote application).

(3) A monitoring warrant may not be issued in relation to an inspector other than the applicant.

(4) However, a monitoring warrant may authorise another inspector to accompany the applicant to execute the warrant.

402Q Content of monitoring warrant

A monitoring warrant must state the following:

(a) the address of the premises to which the warrant relates;

(b) the name of the inspector authorised to enter the premises;

(c) that the inspector may use reasonable force to enter the premises;

(d) if the warrant authorises using assistance in executing the warrant—the assistance that may be used in executing the warrant;

(e) that the warrant ends—

(i) if the ground for applying for the warrant is a circumstance mentioned in section 402N (1) (a) (i)—5 working days after the day the warrant is issued; or

(ii) if the ground for applying for the warrant is a circumstance mentioned in section 402N (1) (a) (ii) to (v)—on the earlier of—

(A) when the circumstance no longer applies; and

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(B) 3 months after the day the warrant is issued.

402R Authorisation by monitoring warrant

The monitoring warrant authorises the stated inspector, and anyone authorised by the warrant to provide assistance, to enter premises in accordance with the warrant.

Note 1 While on the premises, the inspector may exercise power under s 392.

Note 2 For when an inspector may require a person to state the person's name and address, see s 393.

402S Monitoring warrant—remote application

(1) An inspector may apply for a monitoring warrant in relation to premises by phone, fax, radio or other form of communication if the inspector considers it necessary because consent to the inspector's entry to the premises has been withdrawn while the inspector was on the premises.

(2) Before applying for the monitoring warrant, the inspector must prepare an application in accordance with section 402O.

(3) However, the inspector may apply for the remote warrant before the application is sworn.

402T Monitoring warrant—after order made on remote application

(1) After making a monitoring warrant on a remote application, the magistrate must immediately fax a copy to the inspector who made the application if it is practicable to do so.

(2) If it is not practicable to fax a copy of the monitoring warrant to the inspector—

(a) the magistrate must—

(i) tell the inspector the warrant's terms; and

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(ii) tell the inspector the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(3) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(4) On receiving the documents, the magistrate must attach them to the monitoring warrant.

(5) A court must find that a power exercised by the inspector was not authorised by a monitoring warrant made on a remote application if—

(a) the question arises in a proceeding in the court whether the exercise of power was authorised by a monitoring warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a remote warrant.

402U Entry under monitoring warrant—no occupier present

(1) This section applies if—

(a) an inspector proposes to enter premises as authorised by a monitoring warrant; and

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(b) the inspector believes on reasonable grounds that no occupier is present at the premises.

(2) The inspector, and anyone authorised by the warrant to provide assistance, may enter the premises using reasonable force in accordance with the warrant.

402V Entry under monitoring warrant—occupier present

(1) This section applies if—

(a) an inspector proposes to enter premises as authorised by a monitoring warrant; and

(b) an occupier is present at the premises.

(2) The inspector must—

(a) produce his or her identity card to the occupier; and

(b) give the occupier a copy of the monitoring warrant; and

(c) tell the occupier that—

(i) hindering the inspector may be an offence; and

(ii) the inspector may use reasonable force to enter if entry is refused.

(3) The inspector, and anyone authorised by the warrant to provide assistance, may enter the premises using reasonable force in accordance with the warrant.

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Part 12.6 Return and forfeiture of things seized

403 Receipt for things seized

(1) As soon as practicable after an inspector seizes a thing under this chapter, the inspector must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously, at the place of seizure under section 394 (Power to seize things).

(3) A receipt under this section must include the following:

(a) a description of the thing seized;

(b) an explanation of why the thing was seized;

(c) the inspector's name, and how to contact the inspector;

(d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

404 Moving things to another place for examination or processing under search warrant

(1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—

(a) both of the following apply:

(i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

(ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

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(b) the occupier of the premises agrees in writing.

(2) The thing may be moved to another place for examination or processing for no longer than 72 hours.

(3) An inspector may apply to a magistrate for an extension of time if the inspector believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.

(4) The inspector must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

(5) If a thing is moved to another place under this section, the inspector must, if practicable—

(a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and

(b) allow the occupier or the occupier's representative to be present during the examination or processing.

(6) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

404A Action in relation to seized thing

(1) An inspector who seizes a thing under section 392D (Power to seize things on entry under search warrant) may—

(a) remove the thing from the premises where it was seized to another place; or

(b) leave the thing at the premises but restrict access to it.

(2) A person commits an offence if—

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(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (1) (b); and

(b) the person does not have an inspector's approval to interfere with the thing.

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

405 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may—

(a) inspect it; and

(b) if it is a document—take extracts from it or make copies of it.

406 Return of things seized

(1) A thing seized under this chapter must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing if—

(a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day of the seizure and—

(i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or

(ii) a prosecution for an offence relating to the thing is begun within the 1-year period but the court does not find the offence proved; or

(b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—

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(i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or

(ii) a prosecution for an offence relating to the thing is so begun but the court does not find the offence proved; or

(c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 and—

(i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section that liability is disputed; or

(ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved.

(2) If anything seized under this chapter is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—

(a) is forfeited to the Territory; and

(b) may be sold, destroyed or otherwise disposed of as the chief planning executive directs.

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Chapter 13 Review of decisions

Notes to ch 13

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

407 Definitions—ch 13

In this chapter:

decision-maker, for a reviewable decision—each person mentioned in schedule 1, column 3 in relation to a reviewable decision is a ***decision-maker*** for the decision.

eligible entity, for a reviewable decision—each entity mentioned in schedule 1, column 4 in relation to a reviewable decision is an ***eligible entity*** for the decision.

interested entity, for a reviewable decision, means an entity mentioned in schedule 1, column 5 for the decision.

reviewable decision—

(a) means a decision mentioned in schedule 1, column 2; but

(b) does not include—

(i) a decision by the Minister under section 261 about whether considering a development application is in the public interest; or

(ii) a decision by the planning and land authority or Minister to refuse a development application under section 162 because the Minister decides under section 261 that considering the application is not in the public interest.

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408 ACAT review—general

(1) An eligible entity for a reviewable decision may apply to the ACAT for review of the decision.

(2) If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice only to—

(a) each eligible entity for the decision; and

(b) each interested entity for the decision.

Note The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

409 ACAT review—people who made representations etc

(1) This section applies to a reviewable decision in relation to a development application if the person applying to the ACAT for review is not the applicant for the development application.

(2) The application for review must be made not later than 20 working days after—

(a) for a decision to which section 176 (When development approvals take effect—single representation with ACAT review right) applies—the day the person was told about the decision; or

(b) for a decision to which section 177 (When development approvals take effect—multiple representations with ACAT review right) applies—the day final notice of the decision was given.

(3) The period for making the application for review may not be extended under the *ACT Civil and Administrative Tribunal Act 2008*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any rules (see Legislation Act, s 104).

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(4) In this section:

final notice—see section 177 (3).

409A ACAT review—time for making application for deemed decisions

(1) This section applies to a reviewable decision under section 257 (Decision about whether lease concessional) or section 258B (Making other decisions about concessional status of certain leases).

(2) The application for review must be made not later than 20 working days after—

(a) for a decision to which section 257 applies—the 20 working-day period mentioned in section 257 (5); or

(b) for a decision to which section 258B applies—the 20 working-day period mentioned in section 258B (5).

410 Challenge to validity of Ministerial decisions on development applications

The validity of a decision made by the Minister under section 162 (Deciding development applications) may not be questioned in any legal proceeding other than a proceeding begun not later than 28 days after the date of the decision.

Note A decision of the Minister under s 162 is not a reviewable decision (see s 407, def ***reviewable decision*** and sch 1).

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Chapter 14 Miscellaneous

Notes to ch 14

Fees may be determined under s 424 for provisions of this chapter.

If a form is approved under s 425 for a provision of this chapter, the form must be used.

Under this chapter, applications may be made, and notice may be given, electronically in certain circumstances (see the *Electronic Transactions Act 2001*).

411 Restrictions on public availability—comments, applications, representations and proposals

(1) This section applies to—

(a) a person who makes consultation comments on a draft plan variation; or

(b) a person who makes consultation comments on a proposed technical amendment; or

(c) an applicant for development approval; or

(d) a person who makes a representation about a development application; or

(e) a person who makes a representation about a draft EIS; or

(f) the proponent of a development proposal who gives the planning and land authority a revised EIS under section 221.

(2) In this section:

relevant document means—

(a) in relation to a person who makes consultation comments on a draft plan variation—the consultation comments; or

(b) in relation to a person who makes consultation comments on a proposed technical amendment—the consultation comments; or

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(c) in relation to an applicant for development approval—the application for development approval; or

(d) in relation to a person who makes a representation about a development application—the representation; or

(e) in relation to a person who makes a representation about a draft EIS—the representation; or

(f) in relation to the proponent of a development proposal who gives the planning and land authority a revised EIS under section 221—the EIS.

(3) A person to whom this section applies may apply (by ***exclusion application***) in writing to the planning and land authority for part of the relevant document to be excluded from being made available for public inspection.

(4) The planning and land authority may approve or refuse to approve the exclusion application.

(5) However, the planning and land authority must not approve the exclusion application unless satisfied that the part of the relevant document to which the exclusion application relates contains information—

(a) the publication of which would disclose a trade secret; or

(b) the publication of which would, or could reasonably be expected to—

(i) endanger the life or physical safety of any person; or

(ii) lead to damage to, or theft of, property.

(6) If the planning and land authority approves an exclusion application in relation to part of the relevant document, the part must not be made available to the public.

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(7) If part of the relevant document is excluded from copies of the relevant document made available for public inspection, each copy must include a statement to the effect that an unmentioned part of the relevant document has been excluded to protect the confidentiality of information included in the part.

412 Restrictions on public availability—security

(1) This section applies if a justice minister certifies in writing given to the planning and land authority that the publication of part (the ***concerning part***) of a relevant document might—

(a) jeopardise national security; or

(b) expose staff of a security organisation to risk of injury; or

(c) expose the public to risk of injury; or

(d) expose property to risk of damage.

(2) The concerning part of the relevant document must not be made available to the public.

(3) Each copy of the relevant document made public must include a statement to the effect that an unmentioned part of the document has been excluded under this section.

(4) For this section, something ***jeopardises national security*** if it jeopardises the operations of a security organisation.

(5) In this section:

justice minister means—

(a) the Minister responsible for the administration of justice; or

(b) the Commonwealth Attorney-General.

relevant document—each of the following is a ***relevant document***:

(a) a draft plan variation;

(b) consultation comments on a draft plan variation;

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(c) a proposed technical amendment;

(d) consultation comments on a proposed technical amendment;

(e) an application for development approval;

(f) a representation about a development application;

(g) a representation about a draft EIS;

(h) an EIS.

security organisation—each of the following is a security organisation:

(a) the Australian Federal Police;

(b) the Australian Security Intelligence Organisation;

(c) the Australian Secret Intelligence Service;

(d) the police force or service of a State;

(e) an entity established under a law of a State to conduct criminal investigations or inquiries;

(f) any other entity prescribed by regulation.

413 Damage etc to be minimised

(1) In this section:

function means—

(a) for an authorised person—a function under chapter 11; or

(b) for an inspector—a function under chapter 12.

official means—

(a) an authorised person; or

(b) an inspector.

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(2) In the exercise, or purported exercise, by an official of a function, the official must take all reasonable steps to ensure that the official, and any person assisting the official, causes as little inconvenience, detriment and damage as practicable.

(3) If an official, or person assisting an official, damages anything in the exercise or purported exercise of a function, the official must give written notice of the particulars of the damage to the person the official believes, on reasonable grounds, is the owner of the thing.

(4) If the damage happens at premises entered under chapter 12 in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

414 Compensation for exercise of enforcement powers

(1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function by an official or person assisting an official.

(2) Compensation may be claimed and ordered—

(a) in a proceeding for compensation brought in a court of competent jurisdiction; or

(b) in a proceeding for an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

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(4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Examples of what may be prescribed

1 compensation is not payable for actions of authorised people that are unavoidable, like demolishing an unlawful structure if the rectification notice requires the demolition

2 compensation is payable if the damage is reasonably avoidable, like the accidental breaking of a window

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) In this section:

function—see section 413 (1).

official—see section 413 (1).

415 Enforcement actions unaffected by other approvals etc

(1) To remove any doubt, the planning and land authority or an official is not prevented from exercising a function in relation to a matter only because any of the following have been issued in relation to the matter:

(a) a development approval;

(b) a certificate of compliance;

(c) a certificate of occupancy under the *Building Act 2004*.

(2) In this section:

function—see section 413 (1).

official—see section 413 (1).

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416 Evidence of ending of lease

(1) The planning and land authority may certify in writing that a lease mentioned in the certificate has ended.

(2) The certificate is evidence of the matter it states.

416A Basic fences between leased and unleased land

(1) This section applies in relation to an open space boundary of a block of land if, whether before or after the commencement of this section, a development requirement in relation to the block requires the erection of a basic paling fence for the boundary.

(2) The development requirement is taken to have been complied with for the open space boundary if, instead of a basic paling fence, either of the following is erected:

(a) a fence that is exempt from requiring development approval;

(b) a fence in accordance with a notice under the *Common Boundaries Act 1981*, section 23 (Boundary between leased and unleased land).

(3) In this section:

basic paling fence means a fence that consists of not more than—

(a) a support structure; and

(b) timber palings only as the fence's panelling; and

(c) a capping rail.

Example—fences that are not basic paling fences

1 a paling fence with a lattice extension or panelling

2 a fence with brick piers separating paling panels

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).

development requirement, in relation to a block of land, means—

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(a) a condition in a lease for the block of land; or

(b) a condition, other than a condition in a lease for the block of land, that—

(i) was approved by the Territory when the lease was granted; and

(ii) regulates the development or use of the land; or

(c) a requirement of a development approval or a corresponding approval under a repealed territory law.

open space boundary means a boundary between leased and unleased territory land.

U 417 Rights to extract minerals

(1) The planning and land authority may, by a lease or licence, grant a person the right to extract minerals from stated territory land.

(2) The provisions of the lease or licence are the provisions agreed between the parties.

418 Secrecy

(1) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes communicate.

person to whom this section applies means a person who—

(a) is or has been—

(i) the chief planning executive; or

(ii) a member of staff of the planning and land authority; or

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(iii) a member of the staff of the commission; or

(b) exercises, or has exercised, a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

(2) A person to whom this section applies commits an offence if—

(a) the person—

(i) makes a record of protected information about someone else; and

(ii) is reckless about whether the information is protected information about someone else; or

(b) the person—

(i) does something that divulges protected information about someone else; and

(ii) is reckless about whether—

(A) the information is protected information about someone else; and

(B) doing the thing would result in the information being divulged to someone else.

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

(3) Subsection (2) does not apply if the record is made, or the information is divulged—

(a) under this Act or another territory law; or

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(b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or

(c) in a court proceeding.

(4) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.

419 Meaning of *material detriment*

(1) In this Act:

material detriment, in relation to land—an entity suffers ***material detriment*** in relation to land because of a decision if—

(a) the decision has, or is likely to have, an adverse impact on the entity's use or enjoyment of the land; or

(b) for an entity that has objects or purposes—the decision relates to a matter included in the entity's objects or purposes.

(2) However, an entity does not suffer material detriment in relation to land because of a decision only because the decision increases, or is likely to increase, direct or indirect competition with a business of the entity or an associate of the entity.

Note 1 ***Associate***—see dict.

Note 2 ***Material detriment*** is used in sch 1.

420 Ministerial guidelines

(1) The Minister may approve guidelines for the exercise of any power by the Minister under this Act.

(2) The Minister may, but need not, consider advice from the planning and land authority before approving guidelines.

(3) Guidelines are a notifiable instrument.

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

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422 Declaration of authority website

(1) The Minister may declare a website to be the planning and land authority website.

(2) A declaration is a notifiable instrument.

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

422A References in territory plan to certain instruments

(1) A reference in the territory plan to an instrument prescribed by regulation is a reference to the instrument as in force from time to time.

Note 1 A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see Legislation Act, s 47 (1)).

Note 2 If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the Legislation Act (see s 47 (2) to (6)).

(2) The Legislation Act, section 47 (6) does not apply in relation to an instrument mentioned in subsection (1).

423 Construction of outdated references

(1) In any Act, instrument made under an Act or document, a reference to the *Land (Planning and Environment) Act 1991* is, in relation to anything to which this Act applies, a reference to this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) In any Act, instrument made under an Act or document, a reference to a provision of the *Land (Planning and Environment) Act 1991* is, in relation to anything to which this Act applies, a reference to the corresponding provision of this Act.

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(3) In any Act, instrument made under an Act or document, a reference to anything that is no longer applicable because of the repeal of the *Land (Planning and Environment) Act 1991*, and for which there is a corresponding thing under this Act, is taken to be a reference to the thing under this Act, if the context allows and if otherwise appropriate.

424 Determination of fees

(1) The Minister may determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

(2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

425 Approved forms

(1) The planning and land authority may approve forms for this Act.

(2) If the planning and land authority approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

(3) An approved form is a notifiable instrument.

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

426 Regulation-making power

(1) The Executive may make regulations for this Act.

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

(2) A regulation may make provision in relation to the following:

(a) environmental impact statements;

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(b) if this Act does not prescribe when a development approval takes effect—when the development approval takes effect;

(c) the criteria a person must satisfy to be a consultant under section 213;

(d) inquiry panels;

(e) planning reports;

(f) strategic environmental assessments;

(g) procedures for carrying out the authority's functions under chapter 11 (Controlled activities) and chapter 12 (Enforcement).

Examples of what may be prescribed for par (d)

1 selection process for experts to be inquiry panel members

2 establishment of list of experts for inquiry panels

3 appointment of chair for inquiry panel

4 procedures for dealing with absences or departures from inquiry panels

5 procedures for running inquiry panels, including the quorum, holding of hearings, conflict of interest and decision-making

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) A regulation may make provision about a matter by applying, adopting or incorporating (with or without change) a standard, or a provision of a standard, as in force from time to time.

Note 1 A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see Legislation Act, s 47 (1)).

Note 2 If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the Legislation Act (see s 47 (2) to (6)).

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(4) The Legislation Act, section 47 (6) does not apply in relation to an Australian Standard or an Australian/New Zealand Standard applied, adopted or incorporated as in force from time to time under a regulation.

(5) A regulation may create offences and fix maximum penalties of not more than 60 penalty units for the offences.

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Chapter 15 Transitional

Part 15.1 Transitional—general

427 Definitions—ch 15

In this chapter:

commencement day means the day this Act commences.

repealed Act means the *Land (Planning and Environment) Act 1991*.

429 Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Building Legislation Amendment Act 2007*, the *Planning and Development (Consequential Amendments) Act 2007* or this Act.

(2) A regulation may modify this chapter to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.

(3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

430 Transitional effect—Legislation Act, s 88

This chapter (other than section 446 or section 467) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

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M 431 Expiry—ch 15

(1) This chapter (other than part 15.1, part 15.5, section 458 and section 467) expires 3 years after the commencement day.

(2) Part 15.1, part 15.5, section 458 and section 467 expire 5 years after the commencement day.

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Part 15.5 Transitional—existing rights to use land, buildings and structures

448 Transitional—existing rights to use land etc not affected

(1) This section applies if, immediately before commencement day—

(a) a person had a right to use land, or a building or structure on the land, in a way; and

(b) the person's right to use the land, building or structure was authorised by—

(i) the repealed Act, section 175 (Use of land for leased purpose); or

(ii) a lease granted or varied under the repealed Act; or

(iii) a licence granted under the repealed Act; or

(iv) a permit granted under the *Roads and Public Places Act 1937*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including a regulation or the territory plan (see Legislation Act, s 104).

(2) This section also applies if—

(a) before commencement day—

(i) a person had a right to use land, or a building or structure on the land; and

(ii) the right to use the land, building or structure was authorised by a lease (the ***old lease***); and

(iii) the old lease expired; and

(b) the person applies for the grant of a further lease from the old lease under section 254; and

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(c) section 254 applies to the person's application because of section 452.

(3) The use of the land, building or structure in the way authorised is lawful, despite any other provision of this Act.

(4) However, this section does not apply to a use of land, or a building or structure on the land, if the use—

(a) is an authorised use under section 134 (Exempt development—authorised use); but

(b) is an exception to section 134 (1) because section 134 (2) or (3) apply in relation to the land.

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Part 15.6 Transitional—leases and licences

458 Transitional—applications for certain grants before commencement day

(1) This section applies if—

(a) a person applied for the grant of a lease under the repealed Act, section 161 (Granting of leases), section 163 (Leases to community organisations) or section 164 (Special leases); and

(b) the lease was not granted before the commencement day.

(2) The planning and land authority may grant the lease under—

(a) the repealed Act as if the repealed Act had not been repealed; or

(b) if the person agrees in writing to a lease under this Act being granted—this Act.

(3) A lease granted under subsection (2) (a)—

(a) must include a statement—

(i) if the lease is a concessional lease—that the lease is concessional; or

(ii) if the lease is not concessional—to the effect that the lease is a market value lease; and

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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).

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(b) may be registered under the *Land Titles Act 1925* as if the repealed Act had not been repealed; and

(c) is taken to have been granted under this Act.

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Part 15.8 Transitional—administrative

M 467 Transitional—plans of management

(1) This section applies to a plan of management under the repealed Act in force immediately before commencement day.

(2) The plan of management is taken to be a plan of management under this Act.

(3) This Act applies in relation to the plan of management—

(a) as if a reference in the plan to the *Land (Planning and Environment) Act 1991* or the Land Act were a reference to this Act; and

(b) as if a reference to schedule 1 of the *Land (Planning and Environment) Act 1991* or the Land Act were a reference to this Act, schedule 3; and

(c) as if a reference to section 197 of the *Land (Planning and Environment) Act 1991* or the Land Act were a reference to this Act, section 320 (Preparation of plans of management); and

(d) as if a reference to part 4 of the *Land (Planning and Environment) Act 1991* or the Land Act were a reference to this Act, chapter 8 (Environmental impact statements and inquiries); and

(e) with any necessary change and any change prescribed by regulation.

(4) This section is not a section to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

M 467A Transitional—draft plans of management

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Chapter 16 Transitional—Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010

468 Meaning of *commencement day*—ch 16

In this chapter:

commencement day means the day this chapter commences.

469 Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010*.

(2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.

(3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

(4) A regulation under subsection (2) expires 2 years after the day it commences.

470 Expiry—ch 16

This chapter expires 2 years after the commencement day.

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Chapter 17 Transitional—Planning and Development (Lease Variation Charges) Amendment Act 2011

471 Transitional—application for development approval of variation of nominal rent lease

(1) This section applies in relation to a development application if—

(a) the application is made before 1 July 2011; and

(b) the application includes an application to vary a nominal rent lease; and

(c) immediately before 1 July 2011—

(i) division 9.6.3 (Variation of nominal rent leases) applied to the variation; and

(ii) the planning and land authority had not worked out the change of use charge for the variation.

(2) Division 9.6.3 continues to apply to the variation as if the *Planning and Development (Lease Variation Charges) Amendment Act 2011* had not commenced.

(3) However, if before 1 October 2011, the applicant gives the commissioner for revenue notice in writing that it wishes to have the variation dealt with as if the development application had been made after 1 July 2011, the development application is taken to have been made after 1 July 2011.

Note If a form is approved under s 425 for this provision, the form must be used.

472 Expiry—ch 17

This chapter expires 1 July 2012.

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Schedule 1 Reviewable decisions, eligible entities and interested entities

(see s 407)

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
1	decision under s 141 (4) to refuse to extend the period within which further information must be provided	planning and land authority	applicant for extension of time	entity that made representation under s 156 in relation to the application
2	decision under s 162 to approve a development application in the code track subject to conditions	planning and land authority	applicant for development approval	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
3	decision under s 162 to approve a development application in the merit track subject to a condition or to refuse to approve the application, to the extent that the development proposal— (a) is subject to a rule and does not comply with the rule; or (b) is not subject to a rule	planning and land authority	applicant for development approval	entity that made representation under s 156 in relation to the application
4	decision under s 162 to approve a development application in the merit track, whether subject to a condition or otherwise, if— (a) the application was required to be notified under s 153 and s 155, whether or not it was also required to be notified	planning and land authority	an entity if— (a) the entity made a representation under s 156 about the development proposal or had a reasonable excuse for not making a	the approval-holder

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
	under s 154; and (b) the application is not exempted by regulation. *Note* A decision under s 162 is reviewable only to the extent that the development proposal— (a) is subject to a rule and does not comply with the rule; or (b) is not subject to a rule. (see s 121 (2)).		representation; and (b) the approval of the development application may cause the entity to suffer material detriment	
5	decision under s 162 to approve a development application in the impact track subject to a condition, or to refuse to approve the application	planning and land authority	applicant for development approval	entity that made a representation under s 156 in relation to the application

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
6	decision under s 162 to approve a development application in the impact track, whether subject to a condition or otherwise, unless the application is exempted by regulation	planning and land authority	an entity if— (a) the entity made a representation under s 156 about the development proposal or had a reasonable excuse for not making a representation; and (b) the approval of the development application may cause the entity to suffer material detriment	the approval-holder

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
7	decision of entity required, under condition on development approval, to be satisfied in relation to carrying out of development or stage of development (see s 165 (3) (a))	entity whose satisfaction required by condition on development approval	approval holder	planning and land authority
8	decision under s 165 (5) to refuse to approve an amendment of a plan, drawing or other document approved in accordance with a condition of a development approval	planning and land authority	approval holder	entity that made representation under s 156 in relation to the application for development approval
9	decision under s 184 (3) to refuse to extend the prescribed period for finishing development or stage of development	planning and land authority	approval holder	entity that made representation under s 156 in relation to the application for the development approval

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
10	decision under s 189 to revoke development approval	planning and land authority	approval holder of approval revoked	entity that made representation under s 156 in relation to the application for the development approval
11	decision under s 193 (1) (b) (i) on reconsideration to approve application subject to condition	planning and land authority	applicant for reconsideration	entity that made representation under s 156 in relation to the application the approval of which was reconsidered

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
12	decision under s 193 (1) (b) (i) on reconsideration	planning and land authority	an entity if— (a) the entity made a representation under s 156 about the development proposal or had a reasonable excuse for not making a representation; and (b) the approval of the development application may cause the entity to suffer material detriment	applicant for reconsideration

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
13	decision under s 193 (1) (b) (ii) to confirm original decision on reconsideration	planning and land authority	applicant for reconsideration	entity that made representation under s 156 in relation to the application the approval of which was reconsidered
14	decision under s 198 to refuse to amend development approval	planning and land authority	approval holder	entity that made representation under s 156 in relation to the application for development approval
15	decision under s 238 to refuse to grant a lease to a person by direct sale	planning and land authority	applicant for grant of lease	
16	decision under s 250 (2) to end person's right to be granted a lease	planning and land authority	person whose right is ended	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
17	decision under s 252 to refuse to consent to a dealing with a lease	planning and land authority	lessee	
18	decision under s 254 to refuse to grant a further lease	planning and land authority	applicant for grant of further lease	
19	decision under s 257 or s 258 that lease is a concessional lease	planning and land authority	lessee	
20	decision under s 258B or s 258C that lease is a concessional lease	planning and land authority	lessee	
21	decision under s 263 about the payout amount for a concessional lease	planning and land authority	lessee	
22	decision under s 266 to refuse to consent to a dealing with a lease	planning and land authority	lessee	
23	decision under s 268 to confirm variation of rent after review	planning and land authority	lessee	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
24	decision under s 268 to set aside variation and substitute another variation of rent after review	planning and land authority	lessee	
25	decision under s 271 adjusting rent after reappraisal	planning and land authority	lessee	
26	decision under s 272B (2) (d) about amount payable for variation to reduce rent payable under lease to a nominal rent	planning and land authority	lessee	
27	decision under s 277E (1) (b) (i) on reconsideration about amount of lease variation charge for variation of lease	commissioner for revenue	applicant for the reconsideration	
28	decision under s 277E (1) (b) (ii) to confirm original decision on reconsideration about amount of lease variation charge for variation of lease	commissioner for revenue	applicant for the reconsideration	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
29	decision under s 295 (2) about market value of improvements on land	planning and land authority	lessee	
30	decision under s 296 (1) to refuse to issue a certificate of compliance	planning and land authority	lessee	
31	decision under s 296 (2) to issue certificate of compliance stating that building and development provision has been partly complied with	planning and land authority	lessee	
32	decision under s 296 (2) to issue a certificate of compliance subject to condition that lessee provide security	planning and land authority	lessee	
33	decision under s 296 (2) to refuse to issue a certificate of compliance	planning and land authority	lessee	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
34	decision under s 298 to refuse to consent to the assignment or transfer of a lease or interest in a lease	planning and land authority	lessee	
35	decision under s 298B to approve an extension of a stated time for a shorter period than that sought	planning and land authority	lessee	
36	decision under s 298B to refuse an extension of a stated time	planning and land authority	lessee	
37	decision under s 299 (2) to refuse to accept the surrender of a lease, or part of land comprised in lease	planning and land authority	person surrendering lease or part of land comprised in lease	
38	decision under s 299 (2) to accept the surrender of a lease, or part of land comprised in lease, subject to a condition	planning and land authority	person surrendering lease or part of land comprised in lease	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
39	decision under s 300 to refuse to authorise payment of prescribed amount for surrendered or terminated lease	planning and land authority	person surrendering lease or whose lease is terminated	
40	decision under s 351 to make a controlled activity order other than the order applied for	planning and land authority	applicant for controlled activity order	
41	decision under s 351 to refuse to make a controlled activity order	planning and land authority	applicant for controlled activity order	
42	decision under s 351 to make a controlled activity order	planning and land authority	person against whom order directed lessee of land to which order relates occupier of land to which order relates	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
43	decision under s 355 to make a controlled activity order	planning and land authority	person against whom order directed lessee of land to which order relates occupier of land to which order relates	
44	decision under s 363 (4) to refuse to revoke a controlled activity order	planning and land authority	applicant for revocation lessee of land to which order relates occupier of land to which order relates	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
45	decision under s 377 (3) to give a prohibition notice	planning and land authority	person against whom notice directed lessee of land to which notice relates occupier of land to which notice relates	
46	decision under s 380 (3) to refuse to revoke a prohibition notice	planning and land authority	applicant for revocation lessee of land to which notice relates occupier of land to which notice relates	
47	decision under s 382 to terminate a lease	planning and land authority	person whose lease is terminated	
48	decision under s 383 to terminate a licence	planning and land authority	person whose licence is terminated	

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column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested entities
49	decision under s 417 to refuse to grant a right to extract minerals	planning and land authority	person applying for grant of right	

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Schedule 2 Controlled activities

(see s 339 and s 361)

column 1 item	column 2 controlled activities	column 3 penalty
1	failing to comply with— (a) a provision of a lease; or (b) if a lease is granted subject to the lessee entering into a development agreement and the lessee has entered into such an agreement—the development agreement	60 penalty units
2	failing to keep a leasehold clean	60 penalty units
3	undertaking a development for which development approval is required— (a) without development approval; or (b) other than in accordance with the development approval	60 penalty units
4	having a building or structure that was constructed without approval required by this Act, chapter 7 (Development approvals)	60 penalty units
5	using unleased territory land in a way that is not authorised by a licence under this Act or permit under the *Roads and Public Places Act 1937*	60 penalty units
6	managing land held under a rural lease other than in accordance with the land management agreement that applies to it	60 penalty units
7	failing to enter into a land management agreement as required under section 286	60 penalty units

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Schedule 3 Management objectives for public land

(see s 317)

column 1 item	column 2 reserve	column 3 management objectives
1	wilderness area	1 to conserve the natural environment in a manner ensuring that disturbance to that environment is minimal 2 to provide for the use of the area (other than by vehicles or other mechanised equipment) for recreation by limited numbers of people, so as to ensure that opportunities for solitude are provided
2	national park	1 to conserve the natural environment 2 to provide for public use of the area for recreation, education and research
3	nature reserve	1 to conserve the natural environment 2 to provide for public use of the area for recreation, education and research
4	special purpose reserve	1 to provide for public and community use of the area for recreation and education
5	urban open space	1 to provide for public and community use of the area 2 to develop the area for public and community use
6	cemetery or burial ground	1 to provide for the interment or cremation of human remains and the interment of the ashes of human remains

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column 1 item	column 2 reserve	column 3 management objectives
7	protection of water supply	1 to protect existing and future domestic water supply 2 to conserve the natural environment 3 to provide for public use of the area for education, research and low-impact recreation
8	lake	1 to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs 2 to prevent and control pollution of waterways 3 to provide for public use of the lake for recreation 4 to provide a habitat for fauna and flora
9	sport and recreation reserve	1 to provide for public and community use of the area for sport and recreation
10	heritage area	1 to conserve natural and cultural heritage places and objects, including Aboriginal places and objects 2 to provide for public use of the area for recreation, education and research as appropriate, and having proper regard to natural and cultural values

Note ***Natural environment***—see s 317.

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Schedule 4 Development proposals in impact track because of need for EIS

(see s 123 (b))

Part 4.1 Interpretation—sch 4

4.1 Definitions—sch 4

In this schedule:

biodiversity corridor means a river corridor or wildlife corridor identified in the territory plan or in a nature conservation strategy, or action plan, under the *Nature Conservation Act 1980*.

clearing, of native vegetation—see the *Nature Conservation Act 1980*, section 74.

correctional centre—see the *Corrections Management Act 2006*, dictionary.

Corrections Management Act 2006—see the *Crimes (Sentence Administration) Act 2005*, section 603.

crest, of a water storage dam, means the highest point of the dam wall or embankment excluding any parapet, handrail or similar structure on the wall or embankment.

domestic water supply catchment means a domestic water supply catchment identified in the territory plan.

ecological community—see the *Nature Conservation Act 1980*, dictionary.

endangered—see the *Nature Conservation Act 1980*, dictionary.

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flora and fauna committee means the Flora and Fauna Committee established under the *Nature Conservation Act 1980*, section 13.

lowest point of the general foundations, of a water storage dam, means where the dam wall or embankment meets the lowest point of the bed of the river or stream on the downstream side of the wall or embankment.

major road means a road with physically separated carriageways, which has at least 4 lanes (in either direction) and is at least 1km long.

municipal waste—

(a) means—

(i) domestic waste left for kerbside collection or taken directly to a waste station or transfer station; and

(ii) waste produced from maintaining the environment, for example, from street cleaning, emptying public rubbish bins and cleaning parks; but

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).

(b) does not include sewage.

native vegetation—see the *Nature Conservation Act 1980*, section 73.

normal operating level, of a reservoir formed by a water storage dam, means the full water supply level of the reservoir when not affected by flood.

protected—a species is ***protected*** if the species is a protected fish, protected invertebrate, protected native animal or protected native plant under the *Nature Conservation Act 1980*.

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recommended design flood has the same meaning as in the Guidelines on Dam Safety Management 2003, as published from time to time by the Australian National Committee on Large Dams Incorporated.

Note The Guidelines on Dam Safety Management 2003 are accessible at www.ancold.org.au.

regulated waste—see the *Environment Protection Act 1997*, schedule 1, section 1.1A.

special protection status, in relation to a species—see the *Nature Conservation Act 1980*, dictionary.

threatening process—see the *Nature Conservation Act 1980*, dictionary.

vulnerable, in relation to a species—see the *Nature Conservation Act 1980*, dictionary.

water sensitive urban design means a design in accordance with a water sensitive urban code in the territory plan.

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Part 4.2 Development proposals requiring EIS—activities

column 1 item	column 2 development proposal
1	proposal for construction of a transport corridor including a major road, a dedicated bus way, a railway, or a light rail corridor, on any land, other than on land designated under the territory plan as a future urban area or in a transport and services zone, if the proposal is likely to have a significant adverse environmental impact on— (a) air quality so as to be detrimental to the health of persons in an adjoining residential, commercial or community facility zone; or (b) ambient noise or vibration so as to be detrimental to the health of persons in an adjoining residential, commercial or community facility zone
2	proposal that involves— (a) electricity transmission line construction, including additions or realignment works, outside an existing easement or exceeding 500m in length, that are intended to carry underground or above-ground transmission lines with a voltage of 132kV or more; or (b) a coal electricity generating station; or (c) an electricity generating station (other than a coal electricity generating station) including gas, wind, hydroelectric, geothermal, bio-material, solar power or co-generation— (i) that is capable of supplying— (A) the amount of electrical power prescribed by regulation; or (B) if no amount is prescribed—4MW or more of electrical power; or (ii) in a location or of a kind or nature prescribed by regulation; or (d) an electricity generating station if the temperature of water released from the station into a body of water (other than an artificial body of water) is likely to vary by more than 2°C from the ambient temperature of the body of water

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column 1 item	column 2 development proposal
3	proposal for construction of a water storage dam— (a) that will be at least 15m high when measured from the lowest point of the general foundations to the crest of the dam; or (b) that will be at least 10m high when measured from the lowest point of the general foundations to the crest of the dam if— (i) the crest is not less than 500m in length; or (ii) the water storage capacity of the reservoir formed by the dam at normal operating level is at least 1 000 000m^3; or (iii) the recommended design flood discharge dealt with by the dam is at least 2 000m^3 per second; or (c) in the river corridor zone under the territory plan unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact; or (d) on a continuously flowing river in a non-urban zone under the territory plan unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact
4	proposal for construction of an airport or airfield (other than a helicopter landing facility used exclusively for emergency services purposes, including medical evacuation, fire fighting, retrieval or rescue)
5	proposal for construction of a wastewater treatment plant (including a plant for the treatment of sewage or other effluent) that— (a) will be less than 1km from the boundary of a residential block or unit in a residential or commercial zone; or (b) will be able to treat each day more than— (i) 2 500 people equivalent capacity; or (ii) 750kL; or (c) will have capacity to store more than 1kt of sewage, sludge or effluent; or (d) will incinerate sewage or sewage products; or (e) will have a capacity to treat more than 100ML of wastewater (excluding stormwater) each year; but

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column 1 item	column 2 development proposal
	(f) is not— (i) a plant for the treatment of stormwater; or (ii) a small-scale wastewater treatment plant (including a plant for the treatment of sewage or other effluent but not including a small-scale plant prescribed by regulation); or (iii) a residential on-site wastewater treatment system (including a septic tank)
6	proposal for construction of a petroleum storage facility with a storage capacity greater than 500kL of petroleum products at 1 time
7	proposal for construction of a permanent venue for the conduct of motor racing events
8	proposal for use of land for a commercial landfill facility, other than for the disposal of virgin excavated natural material (or other earth and rock fill that is inert waste) if— (a) the intended capacity of the facility is more than 5kt each year, or 20kt in total; or (b) the facility will be— (i) in an area with a high watertable, highly permeable soils, sodic soils or saline soils; or (ii) less than 2km from the boundary of a residential block or unit in a residential or commercial zone
9	proposal for the construction of a waste management facility that is— (a) an incineration facility for the destruction by thermal oxidation of waste including biological, veterinary, medical, clinical, dental, quarantine and municipal waste; or (b) for the sterilisation of clinical waste; or (c) for the storage, treatment, disposal, processing, recycling, recovery, use or reuse of regulated waste
10	proposal for a waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station—

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column 1 item	column 2 development proposal
	(a) is intended to handle more than 30kt of waste each year; or (b) will be less than 1km from the boundary of a residential block or unit in a residential or commercial zone; but (c) is not a small-scale waste management facility, on or near a residential block or near a residential unit, consisting of wheelie bins, small hoppers, or other small waste management bins or enclosures for the use of people living on the residential block or in the residential unit

Note A development application for a development proposal must include an EIS in relation to the proposal if the impact track applies to it because of a declaration under s 125 (Declaration by Public Health Act Minister affects assessment track).

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Part 4.3 Development proposals requiring EIS—areas and processes

column 1 item	column 2 proposal
1	proposal that is likely to have a significant adverse environmental impact on 1 or more of the following, unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact: (a) a species or ecological community that is endangered; (b) a species that is vulnerable; (c) a species that is protected; (d) a species with special protection status; (e) a species or ecological community if a threatening process has been declared under the *Nature Conservation Act 1980*, s 38 (4) in relation to the species or community; (f) a species or ecological community if the flora and fauna committee has stated criteria for assessing whether the committee should recommend the making of a declaration under the *Nature Conservation Act 1980*, s 38 (Declaration of species, community or process) in relation to the species or community; *Note* Criteria are specified under the *Nature Conservation Act 1980*, s 35. An instrument under that Act, s 35 is a disallowable instrument and must be notified, and presented to the Legislative Assembly, under the Legislation Act. (g) an endangered species, an endangered population, an endangered ecological community, a critically endangered species, a critically endangered ecological community or species presumed extinct under the *Threatened Species Conservation Act 1995* (NSW), if the potential impact of the proposal will be on the species or community in New South Wales
2	proposal involving— (a) the clearing of more than 0.5ha of native vegetation other than on land that is designated as a future urban area under the territory plan unless the conservator of flora and fauna produces an environmental significance opinion that the clearing is not likely to have a significant

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column 1 item	column 2 proposal
	adverse environmental impact; or (b) the clearing of more than 5.0ha of native vegetation on land that is designated as a future urban area under the territory plan unless the conservator of flora and fauna produces an environmental significance opinion that the clearing is not likely to have a significant adverse environmental impact
3	proposal for development on land reserved under s 315 for the purpose of a wilderness area, national park, nature reserve or special purpose reserve, unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact
4	proposal that is likely to have a significant adverse environmental impact on— (a) a domestic water supply catchment; or (b) a water use purpose mentioned in the territory plan (water use and catchment general code); or (c) a prescribed environmental value mentioned in the territory plan (water use catchment general code) of a natural waterway or aquifer
5	proposal that is likely to result in environmentally significant water extraction or consumption, other than a proposal for an urban lake, pond or retardation basin or a wastewater reuse scheme— (a) in an existing urban area or on land that has been designated as a future urban area; and (b) that is designed in accordance with the water sensitive urban design general code under the territory plan
6	proposal that is likely to have a significant adverse impact on the heritage significance of a place or object registered under the *Heritage Act 2004*, unless the heritage council produces an environmental significance opinion that the proposal is not likely to have a significant adverse impact
7	proposal involving land included on the register of contaminated sites under the *Environment Protection Act 1997*
8	proposal, other than on land in an existing urban area or land that is designated under the territory plan as a future urban area, with the potential to adversely affect the integrity of a site where significant environmental or ecological

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column 1 item	column 2 proposal
	scientific research is being conducted by a government entity, a university or another entity prescribed by regulation

Note A development application for a development proposal must include an EIS in relation to the proposal if the impact track applies to it because of a declaration under s 125 (Declaration by Public Health Act Minister affects assessment track).

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Schedule 5 Market value leases and leases that are possibly concessional

(see s 235B and s 235C)

Part 5.1 Interpretation

5.1 Definitions—sch 5

In this schedule:

deal—see section 234.

incorporated association means an association incorporated under the *Associations Incorporation Act 1991* or a law of another jurisdiction corresponding, or substantially corresponding, to that Act.

rental lease—see section 234.

residential lease—see section 234.

rural lease—see section 234.

Part 5.2 Market value leases

Note A lease is not a market value lease if the lease states, in the lease or a memorial to the lease, that the lease is a concessional lease or the lease is possibly concessional (see s 235B and s 235C).

column 1 item	column 2 lease
1	a consolidated or subdivided lease or a further or regranted lease, other than a lease mentioned in section 235A (1)
2	a rural lease
3	a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the housing commissioner under the *Housing Assistance Act 2007*

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column 1 item	column 2 lease
4	a lease granted to the Territory or a territory entity *Note* ***Territory entity****—see* the dictionary.
5	a residential lease
6	a rental lease granted for commercial purposes after 1 January 1974 if the rent was paid out— (a) in accordance with a law in force in the Territory; or (b) by agreement between the Commonwealth or the Territory and the lessee **Examples—commercial purposes** 1 industrial 2 business
7	a lease (the ***individual lease***) granted for no consideration if— (a) the individual lease is granted following the subdivision of a lease (the ***head lease***) held by the person to whom the individual lease is granted; and (b) the person has provided infrastructure on the land leased under the head lease
8	a lease granted under the *City Area Leases Act 1936*— (a) before 1 January 1971; and (b) to which that Act, section 18 (Rent) applies; and (c) that does not state, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease *Note* If a lease states that it is subject to a restriction on dealing, the lease is possibly concessional (see sch 5, pt 5.3, item 4).
9	a lease that includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease **Examples—statement in lease** a condition of the lease or a notation or stamp on the lease **Examples—statement to effect that lease is market value lease** the lease is a market value lease or the lease is not concessional

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column 1 **item**	**column 2** **lease**
10	a lease granted to an entity, other than the Territory or a territory entity, if— (a) the lease states that the lease commenced, or is taken to have commenced, on a day (the ***lease commencement day***) earlier than the day the lease was granted; and (b) the land comprised in the lease was occupied by the Territory or a territory entity on the lease commencement day *Note* ***Territory entity***—see the dictionary.
11	a lease granted to the Commonwealth or a Commonwealth entity
12	a lease granted to an entity, other than the Commonwealth or a Commonwealth entity, if— (a) the lease states that the lease commenced, or is taken to have commenced, on a day (the ***lease commencement day***) earlier than the day the lease was granted; and (b) the land comprised in the lease was occupied by the Commonwealth or a Commonwealth entity on the lease commencement day *Note* *Commonwealth* ***entity***—see the dictionary.

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column 1 item	column 2 lease
13	a lease granted under the *City Area Leases Act 1936* if, on 1 July 2009— (a) the lessee of the lease is the holder of a club licence under the *Liquor Act 1975*; and (b) at least 75% of the area of the land comprising the lease is located in 1 or both of the following: (i) a commercial zone under the territory plan; (ii) a designated area under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth); and **Example** 30% of land comprised in a lease is located in a commercial zone and 50% of land is located in a designated area (c) the lease does not state that there is a restriction on dealing with the lease; and (d) the lease authorises the land comprised in the lease to be used for both— (i) a licensed club under the *Liquor Act 1975*; and (ii) a commercial purpose unrelated to the club **Examples—commercial purpose** 1 a shop under the territory plan 2 a non-retail commercial use under the territory plan 3 a commercial accommodation use under the territory plan
14	a lease granted to the Australian National University established under the *Australian National University Act 1991* (Cwlth)
15	a lease granted under the *Land (Planning and Environment) Act 1991*, section 164 (Special leases)
16	a lease granted under the *City Area Leases Act 1936* for commercial purposes

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column 1 **item**	**column 2** **lease**
17	a lease granted after 30 March 2008 other than a lease— (a) that states, in the lease or a memorial to the lease, that the lease is a concessional lease; or (b) that satisfies the requirements under section 235C (1) *Note* Certain leases granted after 30 March 2008 under the *Land (Planning and Environment) Act 1991* are possibly concessional (see s 235C).
18	a lease granted before 31 March 2008 if— (a) the lease was granted for a consideration less than the full market value of the lease, or for no consideration; but (b) 1 of the following payments was made to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease: (i) an amount in relation to the grant of the lease that was equal to the lease's market value at the time of payment or, if the amount was paid in parts, at the time of the last payment; (ii) an amount to reduce the rent payable under the lease to a nominal rent under the *Land (Planning and Environment) Act 1991*, section 186 (Variation of lease to pay out rent)
19	a lease granted before 1 July 2007 if— (a) the lessee applied in writing to the planning and land authority or the Minister to remove the concessional status of the lease; and (b) the planning and land authority or the Minister— (i) approved the application in writing before 31 March 2008, subject to payment of an amount (the ***application amount***), decided by the planning and land authority or the Minister, equal to the lease's market value; and (ii) decided the application amount in writing, after 1 July 2007 and before 31 March 2008; and (c) the lessee did not pay the application amount before 31 March 2008; and (d) the lessee pays the application amount within 6 months after the commencement of this schedule

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column 1 item	column 2 lease
20	a lease prescribed by regulation

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).

Part 5.3 Possibly concessional leases

Note A lease is not possibly concessional if the lease states that the lease is concessional or the lease is mentioned in part 5.2 (see s 235C).

column 1 item	column 2 lease
1	a lease granted to a property trust or other corporation established by or in relation to a religious organisation that may hold property in accordance with an Act
2	a lease granted under the *Leases (Special Purposes) Act 1925*
3	a lease that states, in the lease or a memorial to the lease, that the *Land (Planning and Environment) Act 1991*, section 167 applies to the lease
4	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease
5	a lease that was granted under the *Leases Act 1918*
6	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a requirement that 1 or more stated uses of the land may only be exercised by the lessee
7	a lease granted to an incorporated association if— (a) the incorporated association is still the lessee; and (b) the lease states that the lease is subject to a requirement that the incorporated association occupy a minimum area of land
8	a lease— (a) granted to a club, whether or not the club is still the lessee; or (b) that authorises the land comprised in the lease to be used for a club

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column 1 **item**	**column 2** **lease**
9	a lease granted to a community organisation that states that the lease was granted under the *Land (Planning and Environment) Act 1991*, section 163, whether or not the community organisation is still the lessee *Note* ***Community organisation***—see the dictionary.
10	a lease granted to an incorporated association or community organisation over a unit in a units plan under the *Unit Titles Act 2001* if— (a) the lease (the ***original lease***) that ended on registration of the units plan was granted to the incorporated association or community organisation; and (b) the incorporated association or community organisation occupies the unit— (i) for its own purposes; and (ii) in accordance with a condition in the original lease *Note* On registration of a units plan, the lease of the parcel of land over which the units plan is registered ends (see *Unit Titles Act 2001*, s 33).
11	a lease, other than a rural lease, granted for a term less than 99 years
12	a lease prescribed by regulation, other than a lease in relation to which a dealing was registered after the commencement of this item and before the commencement of the regulation *Note* This item expires 3 years after s 235C (3) commences (see s 235C (3)).

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Dictionary

(see s 3)

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

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- appoint
- commissioner for revenue
- conservator of flora and fauna
- contravene
- corporation
- daily newspaper
- document
- domestic partner (see s 169 (1))
- emergency services authority
- entity
- environment protection authority
- Executive
- exercise
- function
- heritage council
- home address
- may (see s 146)
- month
- must (see s 146)
- national capital authority
- national capital plan
- person
- quarter
- registered surveyor
- registrar-general
- reviewable decision notice

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- territory land
- the Territory
- under
- working day.

Aboriginal object—see the *Heritage Act 2004*, section 9.

Aboriginal place—see the *Heritage Act 2004*, section 9.

accredited valuer means a valuer accredited by—

(a) the Australian Property Institute Incorporated ABN 49 007 505 866; or

(b) if another entity is prescribed by regulation—that entity.

act includes omission.

additional rent means amounts payable under a lease in addition to rent owed under the lease because rent or other amounts owing under the lease have not been paid as required.

approval holder means a person whose application for development approval has been approved (whether subject to a condition or otherwise) if the approval is in force.

associate, of a person, means—

(a) the person's business partner; or

(b) a close friend of the person; or

(c) a family member of the person.

associated document, for part 3.6 (Public register and associated documents)—see section 30.

authorised person, for part 11.4 (Rectification work)—see section 368 (1).

authority means the Planning and Land Authority established under section 10 (1).

authority website means the website declared under section 422.

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background papers, for part 5.3 (Variations of territory plan other than technical amendments)—see section 58.

biodiversity corridor, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

building and development provision, for chapter 9 (Leases and licences)—see section 234.

building surveyor—see the *Construction Occupations (Licensing) Act 2004*, section 9.

business hours, in relation to premises—

(a) means 9.00 am to 5.00 pm on a working day; and

(b) if the premises are not residential premises—includes any period the premises are open for business outside the period mentioned in paragraph (a).

certificate of compliance means a certificate issued under section 296.

certification of occupancy means a certificate issued under the *Building Act 2004*, section 69.

chargeable variation, of a nominal rent lease, for division 9.6.3 (Variation of nominal rent leases)—see section 276.

chief executive officer means the chief executive officer of the land agency.

chief planning executive means the Chief Planning Executive appointed under section 21.

clearing, of native vegetation, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, section 74.

code means a code in the territory plan.

code track—see section 112 (2) (a).

Note Div 7.2.2 deals with the code track.

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code variation, for part 5.4 (Plan variations—technical amendments)—see section 87 (b).

Commonwealth entity means—

(a) a body established under a Commonwealth Act; or

(b) a Commonwealth authority under the *Commonwealth Authorities and Companies Act 1997* (Cwlth); or

(c) a Commonwealth company under the *Commonwealth Authorities and Companies Act 1997* (Cwlth); or

(d) a company in which a controlling interest is held by either of the following, or by both of the following together:

(i) the Commonwealth;

(ii) a Commonwealth company under the *Commonwealth Authorities and Companies Act 1997* (Cwlth).

community organisation means a corporation that—

(a) has, as its principal purpose, the provision of a service, or a form of assistance, to people living or working in the ACT; and

(b) is not carried on for the financial benefit of its members; and

(c) does not hold a club licence under the *Liquor Act 2010*.

complainant—see section 341 (1) (b).

complaint, for chapter 11 (Compliance), means a complaint under section 341.

completed—

(a) for an EIS—see section 209; and

(b) for a s 125-related EIS—see section 209A.

concept plan means a concept plan under section 93.

concessional lease—see section 235A.

connected, for chapter 12 (Enforcement)—see section 386.

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conservation requirement—see the *Heritage Act 2004*, dictionary.

consolidation, for chapter 9 (Leases and licences)—see section 234.

construct, for a building or structure, includes put up the building or structure.

consultation comments, for part 5.3 (Variations of territory plan other than technical amendments)—see section 63 (1) (b).

consultation notice, for part 5.3 (Variations of territory plan other than technical amendments)—see section 63 (1).

consultation period, for part 5.3 (Variations of territory plan other than technical amendments)—see section 63 (1) (a).

controlled activity—see section 339.

controlled activity order means an order made under part 11.3.

correctional centre, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4.

corresponding plan variation, for part 5.3 (Variations of territory plan other than technical amendments)—see section 58.

crest, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

criteria, in relation to a code, means the criteria in the code.

custodian—see section 333.

custodianship map means the map created and notified under section 334.

deal with a lease, for chapter 9 (Leases and licences)—see section 234.

deciding a development application means approving (whether subject to a condition or otherwise) or refusing the development application.

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decision-maker, for chapter 13 (Review of decisions)—see section 407.

declared site—see the *Tree Protection Act 2005*, dictionary.

defined period, for part 10.6 (Leases for public land)—see section 335.

designated area—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 4.

development, in relation to land—see section 7.

development application means an application in relation to a development proposal made under chapter 7 (Development approvals).

development approval means development approval under chapter 7 (Development approvals).

development code—see section 55 (4).

development proposal means a proposal for development, whether in a development application or otherwise.

development table, for a development or development proposal, means the development table in the territory plan that covers the zone in which the development or development proposal is to take place (see s 54).

discharge amount, for division 9.7.2 (Exceptions for rural leases)—see section 282.

domestic water supply catchment, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

draft EIS, for chapter 8 (Environmental impact statements and inquiries)—see section 216 (2) (a).

draft plan variation—see section 60.

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ecological community, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, dictionary.

EIS—see section 208.

eligible entity, for chapter 13 (Review of decisions)—see section 407.

endangered, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, dictionary.

ends—an appeal ***ends*** if it is decided, withdrawn or struck out.

environment—each of the following is part of the environment:

(a) the soil, atmosphere, water and other parts of the earth;

(b) organic and inorganic matter;

(c) living organisms;

(d) structures, and areas, that are manufactured or modified;

(e) ecosystems and parts of ecosystems, including people and communities;

(f) qualities and characteristics of areas that contribute to their biological diversity, ecological integrity, scientific value, heritage value and amenity;

(g) interactions and interdependencies within and between the things mentioned in paragraphs (a) to (f);

(h) social, aesthetic, cultural and economic characteristics that affect, or are affected by, the things mentioned in paragraphs (a) to (f).

Note ***Environmental*** has a corresponding meaning to ***environment*** (see Legislation Act, s 157).

environmental impact statement means an EIS (see s 208).

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environmental significance opinion—see section 138AA (2).

error variation, for part 5.4 (Plan variations—technical amendments)—see section 87 (a).

estate development plan—see section 94.

exclusion application—see section 411 (3).

exempt, in relation to a development proposal or development, means the development proposed or development is exempt from requiring development approval under a development table or by regulation.

exempt development—see section 133.

exemption assessment—see section 138B.

exemption assessment D notice—see section 138D.

flora and fauna committee, for schedule 4 (Development proposals in impact track because of need for EIS), means the Flora and Fauna Committee established under the *Nature Conservation Act 1980*, section 13.

formal error means—

(a) a clerical error; or

(b) an error arising from an accidental slip or omission; or

(c) a defect of form.

future public land, for part 10.6 (Leases for public land)—see section 335.

future urban area means an area of territory land identified in the territory plan for future urban development.

general code—see section 55 (5).

gross floor area, for division 9.6.3 (Variation of nominal rent leases)—see the territory plan (13 Definitions).

heritage direction—see the *Heritage Act 2004*, section 62.

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holding period, for division 9.7.2 (Exceptions for rural leases)—see section 282.

impact track—see section 112 (2) (c).

Note Div 7.2.4 deals with the impact track.

improvement, for part 9.8 (Leases—improvements)—see section 288.

in an assessment track—a development proposal is ***in*** an assessment track if the assessment track applies to the proposal.

inquiry means an inquiry into an EIS established under section 228.

inquiry panel—see section 228 (1) (a).

inspector means a person appointed under section 387.

interested entity, for chapter 13 (Review of decisions)—see section 407.

land agency means the Land Development Agency established under section 31.

land agency board means the governing board of the land agency.

land agency board member means a member of the land agency board.

land management agreement means an agreement under section 283.

Note A reference to an instrument (including a land management agreement) includes a reference to the instrument as originally made and as amended (see Legislation Act, s 102).

land rent lease—see the *Land Rent Act 2008*, section 7 (4).

lease—see section 235.

leasehold, of a lessee, means the land held under the lease.

lease variation charge, for a variation of a nominal rent lease, means the lease variation charge applying under section 276C.

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lessee—

(a) for chapter 9 (Leases and licences)—see section 234; and

(b) for part 9.8 (Leases—improvements)—see section 288.

limited consultation, for part 5.4 (Plan variations—technical amendments)—see section 90.

lowest point of the general foundations, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

LVC determination, for division 9.6.3 (Variation of nominal rent leases)—see section 276.

major road, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

management objectives, for chapter 10 (Management of public land)—see section 317.

market value, for chapter 9 (Leases and licences)—see section 234.

market value lease—see section 235B.

material detriment—see section 419.

memorial—see the *Land Titles Act 1925*, dictionary.

merit track—see section 112 (2) (b).

Note Div 7.2.3 deals with the merit track.

monitoring warrant—see section 402M.

municipal waste, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4.

native vegetation, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, section 73.

natural environment, for schedule 3 (Management objectives for public land)—see section 317 (6).

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nominal rent means—

(a) rent of 5 cents each year; or

(b) if another nominal amount each year is prescribed by regulation—rent of the other nominal amount.

nominal rent lease means a lease for a nominal rent.

normal operating level, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

objectives, for a zone, means the objectives in the territory plan for the zone (see s 51 (1) (b) and s 53).

occupier, for chapter 12 (Enforcement)—see section 386.

offence, for chapter 12 (Enforcement)—see section 386.

ongoing controlled activity order—see section 356.

original application, for division 7.3.10 (Reconsideration of development applications for approval)—see section 191 (1) (a).

original decision—

(a) for division 7.3.10 (Reconsideration of decisions on development applications)—see section 191 (1) (a); and

(b) for division 9.6.3 (Variation of nominal rent leases)—see section 277B (1) (b).

plan means the territory plan under section 46.

planning and land authority means the Planning and Land Authority established under section 10 (1).

planning report—see section 97.

planning strategy means the planning strategy under section 105.

plan of management, for chapter 10 (Management of public land)—see section 313.

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plan variation, for part 5.3 (Variations of territory plan other than technical amendments)—see section 58.

possibly concessional, in relation to a lease—see section 235C.

precinct code—see section 55 (3).

premises, for chapter 12 (Enforcement)—see section 386.

prohibited—

(a) a development is ***prohibited*** if the development is prohibited under the relevant development table or under section 136 (2); and

(b) a development proposal is ***prohibited*** if any part of the development proposed by the proposal is prohibited.

prohibition notice—see section 377 (1).

proponent—

(a) for a development proposal, for chapter 8 (Environmental impact statements and inquiries)—see section 206; or

(b) for part 10.4 (Plans of management for public land)—see section 318.

protected, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

provision of a lease, for chapter 9 (Leases and licences)—see section 234.

public availability notice, for a draft plan variation, for part 5.3 (Variations of territory plan other than technical amendments)—see section 70.

public consultation period, for a draft EIS—see section 218.

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Public Health Act Minister means the Minister responsible for the *Public Health Act 1997*, section 134 (Development approvals under Planning and Development Act, s 125).

public land means land identified by the territory plan as public land.

publicly notifies, in relation to a development application—see section 152.

public notification period, for a development application—see section 157.

public register means the register kept by the planning and land authority under section 27.

recommended design flood, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

reconsideration application—

(a) for division 7.3.10 (Reconsideration of decisions on development applications)—see section 191 (3); and

(b) for division 9.6.3 (Variation of nominal rent leases)—see section 277C (5).

rectification work, for part 11.4—see section 365.

rectification work order—see section 402B.

registered interest, in a lease, means an interest in the lease registered under the *Land Titles Act 1925*.

registered lease, for chapter 9 (Leases and licences)—see section 234.

registered proprietor, for chapter 9 (Leases and licences)—see section 234.

registered tree—see the *Tree Protection Act 2005*, section 9.

regulated tree—see the *Tree Protection Act 2005*, section 10.

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regulated waste, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Environment Protection Act 1997*, schedule 1, section 1.1A.

relevant agency means—

(a) for schedule 4, part 4.2, item 3 (c) and (d)—the conservator of flora and fauna; and

(b) for schedule 4, part 4.3, item 1, item 2 (a) and (b) and item 3—the conservator of flora and fauna; and

(c) for schedule 4, part 4.3, item 6—the heritage council.

relevant code, for a development proposal, means a code that the relevant development table applies to the proposal.

relevant development table, for a development proposal, means the development table that applies to the proposal.

relevant rules, for a development proposal, means the rules that apply to the proposal in each relevant code.

remote application—

(a) for part 12.5A (Rectification work orders)—see section 402A; and

(b) for part 12.5B (Monitoring warrants)—see section 402L.

remote order, for part 12.5A (Rectification work orders)—see section 402A.

remote warrant, for part 12.5B (Monitoring warrants)—see section 402L.

rental lease, for chapter 9 (Leases and licences)—see section 234.

representation—

(a) about a development application, means a representation made under section 156; or

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(b) for chapter 8 (Environmental impact statements and inquiries)—see section 206.

representative Aboriginal organisation—see the *Heritage Act 2004*, section 14.

residential lease, for chapter 9 (Leases and licences)—see section 234.

reviewable decision—see section 407.

rules, in relation to a code, means the rules set out in the code.

rural lease, for chapter 9 (Leases and licences)—see section 234.

s 125-related EIS—see section 208.

s 276E chargeable variation, of a nominal rent lease, for division 9.6.3 (Variation of nominal rent leases)—see section 276A.

s 277 chargeable variation, of a nominal rent lease, for division 9.6.3 (Variation of nominal rent leases)—see section 276A.

scoping document, for chapter 8 (Environmental impact statements and inquiries)—see section 212 (2) (b).

SEA means strategic environmental assessment.

search warrant means a warrant issued under part 12.5.

sewage—see the *Water and Sewerage Act 2000*, dictionary.

show cause notice—

(a) for division 11.3.1 (Controlled activity orders on application)—see section 350 (3); and

(b) for division 11.3.2 (Controlled activity orders on authority's initiative)—see section 353 (2).

significant, in relation to an adverse environmental impact—see section 124A.

single dwelling house lease, for chapter 9 (Leases and licences)—see section 234.

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special protection status, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

statement of planning intent—see section 16 (Statement of planning intent).

statement of strategic directions means the statement of strategic directions in the territory plan (see s 51 and s 52).

strategic environmental assessment—see section 99.

structure includes a fence, retaining wall, swimming pool, ornamental pond, mast, antenna, aerial, road, footpath, driveway, carpark, culvert or service conduit or cable.

structure plan—see section 92.

subdivision, for chapter 9 (Leases and licences)—see section 234.

sublease, for chapter 9 (Leases and licences)—see section 234.

sublessee, for chapter 9 (Leases and licences)—see section 234.

sustainable development—see section 9.

tax includes duty, fee or charge.

technical amendments—see section 87.

technical variation, of a plan of management, for part 10.4 (Plans of management for public land)—see section 318.

territory entity means—

(a) a territory authority; or

(b) a territory instrumentality; or

(c) a territory-owned corporation.

Note ***Territory authority***, ***territory instrumentality*** and ***territory-owned corporation***—see the Legislation Act, dictionary, pt 1.

territory plan means the territory plan under section 46.

territory plan map—see section 51 (1) (e).

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the inter-generational equity principle—see section 9.

the precautionary principle—see section 9.

threatening process, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, dictionary.

tree management plan—see the *Tree Protection Act 2005*, dictionary.

undertaken, for part 9.8 (Leases—improvements)—see section 288.

use land, or a building or structure on the land—see section 8.

variation—

(a) of a lease—

(i) includes the surrender of the lease and the grant of a new lease to the same lessee, subject to different provisions, over land that—

(A) is all or part of the land comprised in the surrendered lease; and

(B) is not in an area identified in the territory plan as a future urban area; and

(ii) without limiting subparagraph (i), includes the surrender of a concessional lease and the grant of a new lease to the same lessee as a market value lease; and

(iii) includes the consolidation or subdivision of the lease within the meaning of section 234; but

(iv) does not include—

(A) the surrender of the lease and the grant of a further lease under section 254 (Grant of further leases); or

(B) a variation to a deed that is incorporated into, or referred to in, the lease, if the deed is varied in a way that is provided for in the deed; and

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(b) of a plan of management, for chapter 10 (Management of public land)—see section 313 (Definitions—ch 10).

Note The terms 'vary' a lease and 'lease variation' have meanings corresponding to 'variation of a lease' (see Legislation Act, s 157 (Defined terms—other parts of speech and grammatical forms)).

vulnerable, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

water sensitive urban design, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

working out statement, for division 9.6.3 (Variation of nominal rent leases)—see section 277B (2).

works assessor—see the *Constructions Occupations (Licensing) Act 2004*, section 14A.

zone means a zone identified in the territory plan.

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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

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

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3 Legislation history

Planning and Development Act 2007 A2007-24

notified LR 13 September 2007
s 1, s 2 commenced 13 September 2007 (LA s 75 (1))
ss 432-434 commenced 27 September 2007 (s 2 and CN2007-13)
remainder commenced 31 March 2008 (s 2 and CN2008-1)

as amended by

Planning and Development (Consequential Amendments) Act 2007 A2007-25 sch 1 pt 1.24

notified LR 13 September 2007
s 1, s 2 commenced 13 September 2007 (LA s 75 (1))
sch 1 pt 1.24 commenced 31 March 2008 (s 2 and see A2007-24, s 2 and CN2008-1)

Building Legislation Amendment Act 2007 A2007-26 sch 1 pt 1.5

notified LR 13 September 2007
s 1, s 2 commenced 13 September 2007 (LA s 75 (1))
sch 1 pt 1.5 commenced 31 March 2008 (s 2 (2) and see A2007-24, s 2 and CN2008-1)

Planning and Development Legislation Amendment Act 2008 A2008-4 pt 2

notified LR 18 March 2008
s 1, s 2 commenced 18 March 2008 (LA s 75 (1))
pt 2 commenced 31 March 2008 (s 2 and see A2007-24, s 2 and CN2008-1)

as modified by

Planning and Development Regulation 2008 SL2008-2 (as am by SL2008-8, SL2008-27, SL2008-33, SL2008-41, SL2009-18, SL2009-35, SL2009-38, SL2010-34)

notified LR 3 March 2008
s 1, s 2 commenced 3 March 2008 (LA s 75 (1))
remainder commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

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Planning and Development Amendment Regulation 2008 (No 1) SL2008-8

notified LR 27 March 2008
s 1, s 2 commenced 27 March 2008 (LA s 75 (1))
remainder commenced 31 March 2008 (s 2 and see Planning and Development Regulation 2008 SL2008-2, s 2, Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

Note This regulation only amends the Planning and Development Regulation 2008 SL2008-2.

Planning and Development Amendment Regulation 2008 (No 2) SL2008-27

notified LR 30 June 2008
s 1, s 2 commenced 30 June 2008 (LA s 75 (1))
remainder commenced 1 July 2008 (s 2)

Note This regulation only amends the Planning and Development Regulation 2008 SL2008-2.

as amended by

Land Rent Act 2008 A2008-16 sch 1 pt 1.2

notified LR 30 June 2008
s 1, s 2 commenced 30 June 2008 (LA s 75 (1))
sch 1 pt 1.2 commenced 1 July 2008 (s 2 and CN2008-10)

as modified by

Planning and Development Amendment Regulation 2008 (No 3) SL2008-33

notified LR 5 August 2008
s 1, s 2 commenced 5 August 2008 (LA s 75 (1))
remainder commenced 6 August 2008 (s 2)

Note 1 This regulation only amends the Planning and Development Regulation 2008 SL2008-2.

Note 2 Mod 20.7 as ins by SL2008-33 s 22 provides for a retrospective commencement of s 459A (see s 459A (4)).

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as amended by

Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.43

notified LR 12 August 2008

s 1, s 2 commenced 12 August 2008 (LA s 75 (1))

sch 3 pt 3.43 commenced 26 August 2008 (s 2)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.39

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.39 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Unit Titles Amendment Act 2008 (No 2) A2008-45 sch 1 pt 1.2

notified LR 10 September 2008

s 1, s 2 commenced 10 September 2008 (LA s 75 (1))

sch 1 pt 1.2 commenced 31 March 2009 (s 2 and CN2008-18)

as modified by

Planning and Development Amendment Regulation 2008 (No 4) SL2008-41

notified LR 15 September 2008

s 1, s 2 commenced 15 September 2008 (LA s 75 (1))

remainder commenced 16 September 2008 (s 2)

Note 1 This regulation only amends the Planning and Development Regulation 2008 SL2008-2.

Note 2 Mod 20.6A as ins by SL2008-41 s 18 provides for a retrospective commencement of s 458 (see s 458 (4)).

Planning and Development Amendment Regulation 2009 (No 6) SL2009-18

notified LR 7 May 2009

s 1, s 2 commenced 7 May 2009 (LA s 75 (1))

remainder commenced 8 May 2009 (s 2)

Note This regulation only amends the Planning and Development Regulation 2008 SL2008-2.

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Planning and Development Amendment Regulation 2009 (No 8) SL2009-35

notified LR 30 June 2009
s 1, s 2 commenced 30 June 2009 (LA s 75 (1))
remainder commenced 1 July 2009 (s 2)

Note This regulation only amends the Planning and Development Regulation 2008 SL2008-2.

Planning and Development Amendment Regulation 2009 (No 9) SL2009-38

notified LR 23 July 2009
s 1, s 2 commenced 23 July 2009 (LA s 75 (1))
remainder commenced 24 July 2009 (s 2)

Note This regulation only amends the Planning and Development Regulation 2008 SL2008-2.

as amended by

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.58

notified LR 1 September 2009
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
sch 3 pt 3.58 commenced 22 September 2009 (s 2)

Planning and Development Amendment Act 2009 A2009-30

notified LR 25 September 2009
s 1, s 2 commenced 25 September 2009
remainder commenced 2 October 2009 (s 2)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.56

notified LR 26 November 2009
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
sch 3 pt 3.56 commenced 17 December 2009 (s 2)

Planning and Development Amendment Act 2010 A2010-4 pt 2

notified LR 17 February 2010
s 1, s 2 commenced 17 February 2010
pt 2 commenced 26 February 2010 (s 2 and CN2010-1)

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Personal Property Securities Act 2010 A2010-15 sch 1 pt 1.2

notified LR 1 April 2010

s 1, s 2 commenced 1 April 2010 (LA s 75 (1))

sch 1 pt 1.2 awaiting commencement (s 2 (2)-(4))

Note 1 If a commencement notice has not fixed a commencement day before the day of the registration commencement time, the remaining provisions automatically commence on the day of the registration commencement time (see s 2 (2), LA s 79 does not apply to this Act).

Note 2 For the meaning of ***registration commencement time*** see the Personal Property Securities Act 2009 (Cwlth).

Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010 A2010-24 pt 5

notified LR 8 July 2010

pt 1 commenced 8 July 2010 (s 2 (1))

pt 5 commenced 8 July 2011 (s 2 (3))

as modified by

Planning and Development (Transitional) Amendment Regulation 2010 (No 1) SL2010-34

notified LR 12 August 2010

s 1, s 2 commenced 12 August 2010 (LA s 75 (1))

remainder commenced 13 August 2010 (s 2)

Note This regulation only amends the Planning and Development Regulation 2008 SL2008-2.

as amended by

Planning and Development (Concessional Leases) Amendment Act 2010 A2010-37 pt 2

notified LR 30 September 2010

s 1, s 2 commenced 30 September 2010 (LA s 75 (1))

pt 2 commenced 7 October 2010 (s 2)

Planning and Development (Public Notification) Amendment Act 2010 A2010-42

notified LR 4 November 2010

s 1, s 2 commenced 4 November 2010 (LA s 75 (1))

remainder commenced 23 November 2010 (s 2 and CN2010-13)

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Planning and Development (Environmental Impact Statements) Amendment Act 2010 A2010-56

notified LR 21 December 2010
s 1, s 2 commenced 21 December 2010 (LA s 75 (1))
remainder commenced 1 February 2011 (s 2 and CN2011-1)

Statute Law Amendment Act 2011 A2011-3 sch 3 pt 3.29

notified LR 22 February 2011
s 1, s 2 commenced 22 February 2011 (LA s 75 (1))
sch 3 pt 3.29 commenced 1 March 2011 (s 2)

Planning and Development (Lease Variation Charges) Amendment Act 2011 A2011-19 pt 2

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
pt 2 commenced 1 July 2011 (s 2)

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.120

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.120 commenced 1 July 2011 (s 2 (1))

Planning and Building Legislation Amendment Act 2011 A2011-23 pt 7

notified LR 6 July 2011
pt 1 commenced 6 July 2011 (s 2 (1))
ss 25-28 commenced 8 July 2011 (s 2 (4) and see Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010 A2010-24 s 2)
pt 7 remainder commenced 7 July 2011 (s 2 (5))

Statute Law Amendment Act 2011 (No 2) A2011-28 sch 3 pt 3.28

notified LR 31 August 2011
s 1, s 2 commenced 31 August 2011 (LA s 75 (1))
sch 3 pt 3.28 commenced 21 September 2011 (s 2 (1))

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4 Amendment history

Commencement
s 2 om LA s 89 (4)

Meaning of *development*
s 7 am A2008-4 s 4, s 5

Delegations by authority
s 20 am A2011-22 amdt 1.350

Contents of public register
s 28 am A2008-5 s 68; A2008-28 amdt 3.117; A2011-3 amdt 3.279; A2011-19 s 4; pars renum R25 LA

Meaning of *associated document*—pt 3.6
s 30 am A2008-28 amdt 3.118

Land agency staff
s 44 am A2011-22 amdt 1.351

Public availability of territory plan
s 47 am A2008-4 s 6

Effect of territory plan
s 50 am A2007-25 amdt 1.109

Public consultation—notification
s 63 am A2011-28 amdt 3.198; ss renum R28 LA

Revision and withdrawal of draft plan variations
s 68 am A2011-28 amdt 3.199; ss renum R28 LA

Public notice of documents given to Minister
s 70 am A2011-28 amdt 3.200; ss renum R28 LA

Minister's powers in relation to draft plan variations
s 76 am A2010-4 s 4; A2011-28 amdt 3.201; ss renum R28 LA

Consequences of rejection of plan variations by Legislative Assembly
s 82 am A2011-28 amdt 3.202; ss renum R28 LA

Partial rejection of plan variations by Legislative Assembly
s 84 am A2011-28 amdt 3.203; ss renum R28 LA

Definitions—pt 5.4
s 86 def ***limited consultation*** sub A2010-4 s 5

What are *technical amendments* of territory plan?
s 87 am A2008-4 s 7; pars renum R2 LA; A2010-4 s 6

Is consultation needed for technical amendments?
s 88 am A2010-4 s 7

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Making technical amendments
s 89 am A2008-4 s 8; A2010-4 s 8

Limited consultation
s 90 am A2011-23 ss 21-24; ss renum R26 LA

Plan variations—structure plans and rezoning
pt 5.5 hdg sub A2008-4 s 9

Rezoning—future urban areas
s 95 am A2008-4 s 10

Rezoning—boundary changes
s 96A ins A2008-4 s 11

Consideration of whether review of territory plan necessary
s 102 am A2011-28 amdt 3.204; ss renum R28 LA

Relationship between development proposals and development applications
s 113 am A2009-30 s 4; A2010-56 s 4; ss renum R22 LA

Application of assessment tracks to development proposals
s 114 am A2009-30 s 5; ss renum R15 LA

Code track—effect of s 134 on development approval
s 116A ins A2010-4 s 9

Merit track—effect of s 134 on development approval
s 120A ins A2010-4 s 10

Merit track—notification and right of review
s 121 am A2008-4 s 69

Impact track applicability
s 123 am A2010-56 s 5

Minister may declare impact track applicable
s 124 am A2010-56 s 6

Meaning of *significant* adverse environmental impact
s 124A ins A2010-56 s 7

Declaration by Public Health Act Minister affects assessment track
s 125 am A2007-25 amdt 1.110; A2011-23 s 37

Declaration etc of impact track after application
s 126 am A2007-25 amdt 1.111; A2008-4 s 69

Impact track—considerations when deciding development approval
s 129 am A2008-4 s 69

Impact track—effect of section 134 on development approval
s 129A ins A2010-4 s 11

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Development proposal for lease variation in designated area
s 131A ins A2009-30 s 6

Development proposal for lease variation other than in designated area
s 131B ins A2010-4 s 12

What is an *exempt development*?
s 133 sub A2010-4 s 13
am A2010-24 s 44; A2011-23 s 25

Exempt development—authorised use
s 134 am A2008-28 amdt 3.119; A2010-4 s 14, s 15

Applications for development approval in relation to use for otherwise prohibited development
s 137 am A2008-4 s 12

Pre-application matters
div 7.3.1 hdg sub A2010-56 s 8

Consideration of development proposals
s 138 am A2011-19 s 5, s 6; pars renum R25 LA; A2010-24 s 45

Impact track proposals if not likely to have significant adverse environmental impact
s 138AA ins A2010-56 s 9

Deciding environmental significance opinion applications
s 138AB ins A2010-56 s 9

Costs of environmental significance opinion
s 138AC ins A2010-56 s 9

Requirements in relation to environmental significance opinions
s 138AD ins A2010-56 s 9

Exemption assessments
div 7.3.1A hdg ins A2010-24 s 46

Purpose of exemption assessment D notices
s 138A ins A2010-24 s 46

Exemption assessment applications
s 138B ins A2010-24 s 46
am A2011-23 s 26; pars renum R27 LA

Exemption assessment not required for development approval
s 138C ins A2010-24 s 46

Exemption assessments and notices
s 138D ins A2010-24 s 46
am A2011-23 s 27, s 28

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Exemption assessment applications—request for further information
s 138E ins A2010-24 s 46

Exemption assessment applications—contents of request for further information
s 138F ins A2010-24 s 46

Exemption assessment applications—effect of failure to provide further information
s 138G ins A2010-24 s 46

Form of development applications
s 139 am A2008-28 amdt 3.120, amdt 3.121; pars renum R6 LA; A2008-45 amdt 1.8; pars renum R9 LA; A2010-56 s 10, s 11; A2011-19 s 7, s 8; A2011-23 s 29; ss renum R26 LA

What is *publicly notifies* for ch 7?
s 152 sub A2008-4 s 13
am A2010-4 s 16

Public notice to adjoining premises
s 153 am A2010-42 s 4, s 5; ss renum R21 LA; A2011-23 s 37

Public notice to registered interest-holders
s 154 am A2010-4 s 17; A2010-42 s 6; ss renum R21 LA; A2011-23 s 37

Major public notification
s 155 am A2010-42 s 7, s 8; ss renum R21 LA; A2011-23 s 37

Representations about development applications
s 156 am A2007-25 amdt 1.112; A2011-23 s 37

Meaning of *public notification period* for development applications—Act
s 157 hdg am A2011-23 s 37
s 157 am A2011-23 s 37

Notice of development applications to registrar-general
div 7.3.4A hdg ins A2010-4 s 18

Notice of development applications
s 157A ins A2010-4 s 18

Direction that development applications be referred to Minister
s 158 am A2010-4 s 19

Minister may decide to consider development applications
s 159 am A2007-25 amdt 1.113

Deciding development applications
s 162 am A2007-25 amdt 1.114; A2008-4 s 14, s 69; ss renum R2 LA

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Power to approve etc development applications deemed refused
s 163 am A2007-25 amdt 1.115; A2008-36 amdt 1.541

Conditional approvals
s 165 am A2008-45 amdt 1.9; pars renum R9 LA

Lease to be varied to give effect to development approval
s 165A ins A2008-4 s 15

Extension of time for further information—further information sufficient
s 166 am A2008-4 s 16; pars renum R2 LA

Extension of time—application amended
s 169 am A2011-23 s 37

Notice of approval of application
s 170 am A2008-36 amdt 1.542; A2010-4 s 20; A2011-23 s 30

Notice of refusal of application
s 171 am A2008-36 amdt 1.543, amdt 1.544

When development approvals take effect—no representations and no right of review
s 175 am A2008-36 amdt 1.557

When development approvals take effect—single representation with ACAT review right
s 176 hdg am A2008-36 amdt 1.557
s 176 am A2008-36 amdt 1.557

When development approvals take effect—multiple representations with ACAT review rights
s 177 hdg am A2008-36 amdt 1.557
s 177 am A2008-36 amdt 1.557

When development approvals take effect—ACAT review
s 178 hdg sub A2008-36 amdt 1.545
am A2008-36 amdt 1.546, amdt 1.557; A2010-4 ss 21-23

When development approval takes effect—activity not allowed by lease
s 179 am A2008-36 amdt 1.557; A2010-4 s 24, s 25

When development approval takes effect—condition to be met
s 180 am A2008-36 amdt 1.557; A2010-4 s 26, s 27

When development approval takes effect—application for reconsideration
s 182 am A2007-25 amdt 1.116; A2008-36 amdt 1.557; A2010-4 s 28, s 29

End of development approvals other than lease variations
s 184 am A2010-4 ss 30-33; A2011-23 s 31

End of development approvals for lease variations
s 185 am A2010-4 s 34; A2011-23 s 31

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End of development approvals for use under lease without lease variation, licence or permit
s 186 am A2010-4 s 35; A2011-23 s 31

End of development approvals for use under licence or permit
s 187 am A2010-4 s 36, s 37; A2011-23 s 31

Applications for reconsideration
s 191 am A2008-36 amdt 1.557

Notice to ACAT of reconsideration application
s 192 hdg am A2008-36 amdt 1.557
s 192 am A2008-36 amdt 1.557

Reconsideration
s 193 am A2008-36 amdt 1.557

Notice of decisions on reconsideration
s 195 am A2008-36 amdt 1.547

Applications to amend development approvals
s 197 am A2009-30 s 7; A2010-4 s 38

Deciding applications to amend development approvals
s 198 am A2009-30 s 8; A2010-4 ss 39-41; ss renum R18 LA

Exception to referral requirement under s 198 (1) (b)
s 198A ins A2009-30 s 9

Waiver of notification requirement under s 198 (1) (b)
s 198B ins A2009-30 s 9

When development approvals do not require amendment
s 198C ins A2009-30 s 9

Offence to develop without approval
s 199 am A2007-25 amdt 1.117; A2010-24 s 47

Development other than use lawful when begun
s 203 am A2009-30 s 10

Use as development lawful when begun
s 204 am A2009-30 s 11

Development applications for developments undertaken without approval
s 205 am A2010-4 s 42; ss renum R18 LA

Definitions—ch 8
s 206 def ***scoping document*** am A2008-4 s 69

Proponents
s 207 am A2008-28 amdt 3.122

What is an *EIS* and a *s 125-related EIS*?
s 208 sub A2007-25 amdt 1.118

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am A2010-56 s 12

When is an EIS *completed*?
s 209 am A2007-25 amdt 1.119; A2008-4 s 66; A2008-28 amdt 3.123

When is a s 125-related EIS completed?
s 209A ins A2007-25 amdt 1.120
am A2008-4 s 17, s 18, s 66

When is a completed EIS required?
s 210 am A2010-56 s 13

EIS not required if development application exempted
s 211 am A2008-4 s 69; A2010-56 s 14

Scoping of EIS
s 212 am A2008-28 amdt 3.124; A2010-56 s 15, s 16; ss renum R22 LA

Time to provide scoping document
s 214 am A2007-25 amdt 1.121

Term of scoping document
s 215 sub A2010-56 s 17

Preparing draft EIS
s 216 am A2008-4 s 69

Publication of representations about draft EIS
s 220 am A2008-4 s 69

Authority consideration of EIS
s 222 am A2008-4 s 69; A2010-56 s 18

Chance to address unaddressed matters
s 224 am A2010-56 s 19

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s 224A ins A2010-56 s 20

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s 224B ins A2010-56 s 20

Giving EIS to Minister
s 225 am A2007-25 amdt 1.122; A2008-4 s 69; A2010-56 s 21, s 22; ss renum R22 LA

EIS assessment report
s 225A ins A2010-56 s 23

Notice of no action on EIS given to Minister
s 226 am A2008-28 amdt 3.125

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Establishment of inquiry panels
s 228 am A2007-25 amdt 1.123; ss renum R2 LA; A2008-28 amdts 3.126-3.129

How does the Minister establish an inquiry panel?
s 229 am A2008-5 s 66

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s 230 am A2008-28 amdt 3.130

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s 234 def ***single dwelling house lease*** ins A2008-4 s 19
def ***rental lease*** am A2010-4 s 43
def ***residential lease*** sub A2011-19 s 9

Meaning of *lease*—Act
s 235 am A2007-25 amdt 1.124; A2010-4 ss 44-47
sub A2010-37 s 4

Meaning of *concessional lease*—Act
s 235A ins A2010-37 s 4

Meaning of *market value lease*—Act
s 235B ins A2010-37 s 4

Meaning of *possibly concessional*—Act
s 235C ins A2010-37 s 4
(3) exp 7 October 2013 (s 235C (3))

Granting leases
s 238 am A2008-4 s 20; A2008-16 amdt 1.4; A2010-37 s 5

Lease conditional on approval for stated development
s 238A ins A2010-4 s 48

Eligibility for grant of lease
s 239 sub A2008-4 s 21

Restriction on direct sale by authority
s 240 am A2007-25 amdt 1.125; A2008-4 ss 22-24; pars renum R2 LA; A2010-4 s 49, s 50

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s 242 sub A2008-4 s 25

Payment for leases
s 246 am A2008-16 amdt 1.5; pars renum R4 LA; A2009-30 ss 12-14; ss and pars renum R15 LA; A2010-4 s 51

Payment for adjoining concessional leases
s 246A ins A2009-30 s 15

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s 247 am A2008-4 s 26, s 27

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No right to use, flow and control of water
s 249 am A2007-25 amdt 1.126

Failure to accept and execute lease
s 250 am A2009-49 amdt 3.131; A2010-4 s 52

Restrictions on dealings with certain leases
s 251 am A2008-4 ss 28-30; ss renum R2 LA; A2010-4 s 53, s 54; ss renum R18 LA; A2010-37 s 6

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s 254 am A2009-30 s 16; A2010-37 s 7

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s 255 am A2009-30 s 17

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s 257 am A2007-25 amdt 1.127, amdt 1.128; A2008-36 amdt 1.548, amdt 1.549; A2010-37 ss 8-12; ss renum R20 LA

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s 258 am A2008-36 amdt 1.550; A2010-37 s 13, s 14; ss renum R20 LA

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s 258A ins A2010-37 s 15

Making other decisions about concessional status of certain leases
s 258B ins A2010-37 s 15

Authority may make another decision about whether certain leases concessional on own initiative
s 258C ins A2010-37 s 15

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s 259 am A2008-36 amdt 1.551
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Lodging notice of deemed decision about concessional status of lease
s 259A ins A2010-37 s 16

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s 259B ins A2010-37 s 16

Concessional status of leases
s 259C ins A2010-37 s 16

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s 259D ins A2010-37 s 16

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s 260 am A2010-37 s 17

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s 260A ins A2010-37 s 18

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s 261 am A2010-56 s 24, s 25

Development approval of application about concessional lease subject to condition
s 262 am A2010-37 s 19, s 20

Working out amount payable to discharge concessional leases
s 263 am A2010-37 s 21; A2011-19 s 10

Restrictions on dealings with concessional leases
s 265 am A2010-37 s 22

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s 266A ins A2008-16 amdt 1.6

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s 269 (6)-(8) exp 31 March 2009 (s 269 (7) (LA s 88 declaration applies))

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s 271 am A2008-16 amdt 1.7

Advice of rent payable on variation of lease
s 272 am A2008-16 amdt 1.8

Application for rent payout lease variation
s 272A ins A2008-4 s 31
am A2008-16 amdt 1.9

Decision on rent payout lease variation application
s 272B ins A2008-4 s 31
am A2008-16 amdt 1.10; pars renum R4 LA; A2008-36 amdt 1.552; A2010-4 s 55, s 56

Policy directions for paying out rent
s 272C ins A2008-4 s 31

Power to decide rent payout applications deemed refused
s 272D ins A2008-4 s 31
am A2008-36 amdt 1.553; A2010-4 s 57

Lease to be varied to pay out rent
s 273 sub A2008-4 s 31
am A2010-4 s 58

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s 275 am A2010-37 s 23

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s 276	sub A2011-19 s 11
	def ***chargeable variation*** ins A2011-19 s 11
	def ***gross floor area*** ins A2011-19 s 11
	def ***LVC determination*** ins A2011-19 s 11
	def ***original decision*** ins A2011-19 s 11
	def ***reconsideration application*** ins A2011-19 s 11
	def ***s 276E chargeable variation*** ins A2011-19 s 11
	def ***s 277 chargeable variation*** ins A2011-19 s 11
	def ***working out statement*** ins A2011-19 s 11

Meaning of *s 276E chargeable variation* and *s 277 chargeable variation*—div 9.6.3

s 276A	ins A2011-19 s 11

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s 276B	ins A2011-19 s 11

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s 276C	ins A2011-19 s 11

Lease variation charges—notice of assessment

s 276D	ins A2011-19 s 11

Lease variation charges—s 276E chargeable variations

s 276E	ins A2011-19 s 11
	(7), (8) exp 1 July 2012 (s 276E (8))

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s 276F	ins A2011-19 s 11

Lease variation charges—s 277 chargeable variations

s 277	sub A2011-19 s 11

Lease variation charge under s 277—improvements

s 277A	ins A2011-19 s 11

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s 277B	ins A2011-19 s 11

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s 277C	ins A2011-19 s 11

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s 277D	ins A2011-19 s 11

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s 277F	ins A2011-19 s 11

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Lease variation charge under s 277—notice of decisions on reconsideration
s 277G ins A2011-19 s 11

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s 278 am A2007-25 amdt 1.129, amdt 1.130
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When commissioner must remit lease variation charge—certain zones
s 278A ins A2011-19 s 11

When commissioner must remit lease variation charge—community purpose
s 278B ins A2011-19 s 11

When commissioner must remit lease variation charge—heritage significance
s 278C ins A2011-19 s 11

When commissioner must remit lease variation charge—environmental remediation
s 278D ins A2011-19 s 11

When commissioner must remit lease variation charges—other
s 278E ins A2011-19 s 11

When commissioner must remit lease variation charges—chargeable variations generally
s 278F ins A2011-19 s 11
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s 279 am A2007-25 amdt 1.131, amdt 1.132
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s 279A ins A2011-19 s 11

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s 279B ins A2011-19 s 11

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s 279C ins A2011-19 s 11

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s 280 sub A2009-30 s 18

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s 282 def ***holding period*** am A2007-25 amdt 1.133

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s 283 am A2008-28 amdt 3.131

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s 284 am A2010-4 s 59

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s 288	am A2008-4 s 32 def ***improvement*** ins A2008-4 s 32

Transfer of land subject to building and development provision

s 298	am A2007-25 amdts 1.134-1.137; A2010-4 s 60, s 61; A2010-37 s 24

Application for extension of time to commence or complete works

s 298A hdg	sub A2010-4 s 62
s 298A	ins A2008-4 s 33 am A2009-30 s 19; A2001-4 s 63, s 64

Extension of time to commence or complete works

s 298B hdg	sub A2010-4 s 65
s 298B	ins A2008-4 s 33 am A2009-30 s 20; A2010-4 s 66

Extension of time to commence or complete works—required fee

s 298C	ins A2010-4 s 67

Lessee may surrender lease or part of lease

s 299	**orig s 299** renum as s 300 **pres s 299** (prev s 300) renum and reloc as s 299 A2008-28 amdt 3.133

Refund on lease surrender or termination

s 300	**orig s 300** renum as s 299 **pres s 300** (prev s 299) am A2007-25 amdt 1.138 renum as s 300 A2008-28 amdt 3.132

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s 312A	ins A2009-30 s 21 (4)-(6) exp 3 October 2009 (s 312A (6) (LA s 88 declaration applies))

Who may complain?

s 340	am A2007-26 amdt 1.103

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s 341	am A2007-26 amdt 1.104

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s 343	am A2007-26 amdt 1.105

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s 346	am A2007-26 amdt 1.106

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Applications to authority for controlled activity orders
s 350 am A2008-4 s 65, s 68

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s 353 am A2008-4 s 65, s 68

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s 358 am A2008-5 s 68; A2010-4 s 68, s 69, pars renum R18 LA

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s 359 am A2008-5 s 68

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s 360 am A2008-5 s 68

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s 362 am A2008-36 amdt 1.557

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s 365 def ***rectification work*** am A2008-4 s 65

Direction to carry out rectification work
s 366 am A2008-4 s 65, s 68

Authorisation to carry out rectification work
s 368 am A2008-4 s 68; A2008-36 amdt 1.557

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s 370 sub A2008-4 s 34

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s 376A ins A2008-4 s 35

Giving prohibition notices
s 377 am A2008-4 s 65, s 68

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s 378 am A2008-4 s 65, s 68

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s 389 sub A2008-4 s 36

Consent to entry without authorised person
s 391 hdg sub A2008-4 s 37
s 391 am A2008-4 ss 38-40

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s 391A ins A2008-4 s 41

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s 391B ins A2008-4 s 41
am A2010-4 s 70, s 71

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s 392 sub A2008-4 s 42

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Power on entry for rectification work
s 392A ins A2008-4 s 42

Power to require help on entry under warrant
s 392B ins A2008-4 s 42

Power to take samples on entry under warrant
s 392C ins A2008-4 s 42

Power to seize things on entry under search warrant
s 392D ins A2008-4 s 42

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s 393 am A2009-49 amdt 3.132

Power to seize things
s 394 om A2008-4 s 43

Authority may ask for information from commissioner for revenue in certain cases
s 395A ins A2007-25 amdt 1.139

Authority may ask for information about leases from commissioner for revenue
s 395B ins A2010-4 s 72

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s 398 am A2008-5 s 67

Warrants—application made other than in person
s 399 am A2008-5 s 67

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pt 12.5A hdg ins A2008-4 s 44

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s 402A def ***remote application*** ins A2008-4 s 44
def ***remote order*** ins A2008-4 s 44

Meaning of *rectification work order*—Act
s 402B ins A2008-4 s 44

When may inspector apply for rectification work order?
s 402C ins A2008-4 s 44
am A2010-4 s 73

Application for rectification work order generally
s 402D ins A2008-4 s 44

Decision on application for rectification work order
s 402E ins A2008-4 s 44

Content of rectification work order
s 402F ins A2008-4 s 44

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Authorisation by rectification work order
s 402G ins A2008-4 s 44

Rectification work order—remote application
s 402H ins A2008-4 s 44

Rectification work order—after order made on remote application
s 402I ins A2008-4 s 44

Entry under rectification work order—no occupier present
s 402J ins A2008-4 s 44

Entry under rectification work order—occupier present
s 402K ins A2008-4 s 44

Monitoring warrants
pt 12.5B hdg ins A2008-4 s 44

Definitions—pt 12.5B
s 402L def ***remote application*** ins A2008-4 s 44
def ***remote warrant*** ins A2008-4 s 44
def ***warrant form*** ins A2008-4 s 44

Meaning of *monitoring warrant*—Act
s 402M ins A2008-4 s 44

When may inspector apply for monitoring warrant?
s 402N ins A2008-4 s 44
am A2010-4 s 74

Application for monitoring warrant generally
s 402O ins A2008-4 s 44

Decision on application for monitoring warrant
s 402P ins A2008-4 s 44

Content of monitoring warrant
s 402Q ins A2008-4 s 44

Authorisation by monitoring warrant
s 402R ins A2008-4 s 44

Monitoring warrant—remote application
s 402S ins A2008-4 s 44

Monitoring warrant—after order made on remote application
s 402T ins A2008-4 s 44

Entry under monitoring warrant—no occupier present
s 402U ins A2008-4 s 44

Entry under monitoring warrant—occupier present
s 402V ins A2008-4 s 44

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Receipt for things seized
s 403 am A2008-5 s 67

Moving things to another place for examination or processing under search warrant
s 404 am A2008-5 s 67

Action in relation to seized thing
s 404A ins A2010-4 s 75

Access to things seized
s 405 am A2008-5 s 67

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s 406 am A2008-5 s 67

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s 407 def ***interested entity*** ins A2007-25 amdt 1.140
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s 408 am A2007-25 amdt 1.141, amdt 1.142
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ACAT review—people who made representations etc
s 409 sub A2008-36 amdt 1.554
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s 409A ins A2010-37 s 25

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s 411 am A2011-23 s 32, s 33; pars renum R26 LA

Restrictions on public availability—security
s 412 am A2011-23 s 34; pars renum R26 LA

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s 416A ins A2008-4 s 45

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s 417 am A2010-15 amdt 1.2

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s 421 am A2007-25 amdt 1.143
om A2011-28 amdt 3.205

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s 424 am A2011-3 amdt 3.280

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s 425 am A2011-3 amdt 3.281

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References in territory plan to certain instruments

s 422A ins A2008-4 s 46

Regulation-making power

s 426 am A2007-25 amdt 1.144, amdt 1.145; A2008-4 ss 47-49; ss renum R2 LA; A2010-24 s 48

Transitional

ch 15 hdg exp 31 March 2013 (s 431 (LA s 88 declaration applies))

Transitional—general

pt 15.1 hdg exp 31 March 2013 (s 431 (2) (LA s 88 declaration applies))

Definitions—ch 15

s 427 exp 31 March 2013 (s 431 (2) (LA s 88 declaration applies))

Repeals

s 428 om LA s 89 (3)

Transitional regulations

s 429 exp 31 March 2013 (s 431 (2) (LA s 88 declaration applies))

Modification—s 114 (Application of assessment tracks to development proposals)

s 429AA ins as mod SL2008-2 mod 20.1 (as am by SL2008-41 s 14)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—div 7.2.5 (Development proposals not in development table and not exempted)

s 429AB ins as mod SL2008-2 mod 20.1 (as am by SL2008-41 s 14)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 197 (Applications to amend development approvals)

s 429A ins as mod SL2008-2 mod 5.1 (as ins by SL2008-8 s 51)
sub as mod SL2008-2 mod 20.1 (as ins by SL2008-33 s 21)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 198 (Deciding applications to amend development approvals)

s 429B ins as mod SL2008-2 mod 20.1 (as ins by SL2008-33 s 21)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—div 7.3.11 (Correction and amendment of development approvals)

s 429C ins as mod SL2008-2 mod 20.1 (as ins by SL2008-33 s 21)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

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Modification—s 203 (Development other than use lawful when begun)

s 429D ins as mod SL2008-2 mod 20.1 (as ins by SL2008-33 s 21)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 204 (Use as development lawful when begun)

s 429E ins as mod SL2008-2 mod 20.1 (as ins by SL2008-33 s 21)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 246 (Payment for leases)

s 429EA ins as mod SL2008-2 mod 20.1 (as ins by SL2008-41 s 15; as sub by SL2009-18 s 4)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 246 (Payment for leases)

s 429EAA ins as mod SL2008-2 mod 20.1 (as ins by SL2009-38 s 13)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 246 (Payment for leases)

s 429EAB ins as mod SL2008-2 mod 20.1 (as ins by SL2009-38 s 13)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 254 (Grant of further leases)

s 429EB ins as mod SL2008-2 mod 20.1 (as ins by SL2008-41 s 15)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 255 (Grant of further lease includes authorised use)

s 429EC ins as mod SL2008-2 mod 20.1 (as ins by SL2008-41 s 15)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 280 (Determination of amount payable for further leases—rural land)

s 429ED ins as mod SL2008-2 mod 20.1 (as ins by SL2008-41 s 15)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Modification—s 298A (Application for extension of time to commence or complete building and development)

s 429F ins as mod SL2008-2 mod 20.1 (as ins by SL2008-33 s 21; as am by SL2008-41 s 16; as sub by SL2009-35 s 21)
mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

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Modification—s 298B (Extension of time to commence or complete building and development)

s 429G	ins as mod SL2008-2 mod 20.1 (as am by SL2008-41 s 17) mod lapsed 2 October 2009 (SL2008-2 mod 20.1 om by A2009-30 s 36)

Transitional effect—Legislation Act, s 88

s 430	am A2010-37 s 26 exp 31 March 2013 (s 431 (2) (LA s 88 declaration applies))

Expiry—ch 15

s 431	sub A2008-4 s 50 mod SL2008-2 mod 5.1A (renum as mod 20.1A) (as ins by SL2008-27 s 4) mod lapsed 2 October 2009 (SL2008-2 mod 20.1A om by A2009-30 s 36) am A2009-30 s 22 sub A2010-4 s 77 mod SL2008-2 mod 21.1 (as ins by SL2010-34 s 5) (mod exp 31 March 2013 see SL2008-2 s 411 (2)) am A2010-37 s 27 exp 31 March 2013 (s 431 (2) (LA s 88 declaration applies))

Transitional—territory plan

pt 15.2 hdg	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—territory plan

s 432	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—public consultation on territory plan

s 433	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—consultation with national capital authority

s 434	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—variations begun but not notified under repealed Act

s 435 hdg	sub A2008-4 s 51
s 435	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—draft plan variations publicly notified under repealed Act

s 436 hdg	sub A2008-4 s 52
s 436	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—draft plan variation revised etc under repealed Act

s 437 hdg	sub A2008-4 s 53
s 437	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—draft plan variation submitted to Minister under repealed Act

s 438	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

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Transitional—draft plan variation referred to Legislative Assembly committee under repealed Act

s 439 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—planning strategy

pt 15.3 hdg exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—planning strategy

s 440 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Development and development applications

pt 15.4 hdg exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—meaning of *development*—Act

s 441 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—applications lodged before commencement day

s 442 mod SL2008-2 mod 5.2, mod 5.3 (renum as mod 20.2, mod 20.3) (as ins by SL2008-8 s 51)
mod lapsed 2 October 2009 (SL2008-2 mod 20.2, mod 20.3 om by A2009-30 s 36)
am A2009-30 s 23, s 24
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—applications for subdivision lodged before commencement day

s 442A ins A2008-4 s 54
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—application for review lodged after commencement day for application lodged before commencement day

s 442B ins A2008-4 s 54
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—development application lodged on or after commencement day for estate development plan given before commencement day

s 442C ins as mod SL2008-2 mod 5.3A (renum as mod 20.3A) (as ins by SL2008-27 s 5)
mod lapsed 2 October 2009 (SL2008-2 mod 20.3A om by A2009-30 s 36)
ins A2009-30 s 25
am A2010-4 s 78
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—applications for review not finally decided

s 443 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—approvals under repealed Act

s 444 sub as mod SL2008-2 mod 5.4 (renum as mod 20.4) (as ins by SL2008-8 s 51)
mod lapsed 2 October 2009 (SL2008-2 mod 20.4 om by A2009-30 s 36)

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sub A2009-30 s 26
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Commencement of development approvals under repealed Act

s 444A ins as mod SL2008-2 mod 5.4A (renum as mod 20.4A) (as ins by SL2008-27 s 6)
mod lapsed 2 October 2009 (SL2008-2 mod 20.4A om by A2009-30 s 36)
ins A2009-30 s 26
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—approvals in force with uncommenced extension

s 445 mod SL2008-2 mod 5.5 (renum as mod 20.5) (as ins by SL2008-8 s 51)
mod lapsed 2 October 2009 (SL2008-2 mod 20.5 om by A2009-30 s 36)
am A2009-30 s 27
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Power to make lease and development conditions

s 446 am A2008-4 s 55
sub as mod SL2008-2 mod 5.5A (renum as mod 20.5A) (as ins by SL2008-27 s 7)
mod lapsed 2 October 2009 (SL2008-2 mod 20.5A om by A2009-30 s 36)
sub A2009-30 s 28
am A2010-37 s 28
exp 31 March 2011 (s 431 (1))

Transitional—application for development approval if lease and development condition

s 446A ins A2008-4 s 56
sub as mod SL2008-2 mod 5.5A (renum as mod 20.5A) (as ins by SL2008-27 s 7)
mod lapsed 2 October 2009 (SL2008-2 mod 20.5A om by A2009-30 s 36)
ins A2009-30 s 28
am A2010-37 s 29
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—revised EIS to vary lease to change concessional status

s 446B ins A2010-56 s 26

Transitional—extended meaning of *development approval*—s 199

s 447 hdg sub A2008-4 s 57
s 447 om as mod SL2008-2 mod 5.6 (renum as mod 20.6) (as ins by SL2008-8 s 51)
mod lapsed 2 October 2009 (SL2008-2 mod 20.6 om by A2009-30 s 36)
om A2009-30 s 29

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Transitional—existing rights to use land, buildings and structures
pt 15.5 hdg exp 31 March 2013 (s 431 (2) (LA s 88 declaration applies))

Transitional—existing rights to use land etc not affected
s 448 hdg sub A2008-4 s 58
s 448 exp 31 March 2013 (s 431 (2) (LA s 88 declaration applies))

Transitional—leases and licences
pt 15.6 hdg exp 31 March 2013 (s 431 (LA s 88 declaration applies))

Transitional—community leases
s 449 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—special leases—s 251
s 450 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—Leases Act 1918 leases—s 251
s 451 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—extended application of s 254
s 452 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—extended application of s 275
s 453 am A2010-37 s 30
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—extended application of s 284
s 454 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—effect of s 249
s 455 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—status of leases and licences
s 456 am A2010-4 s 79; ss renum R18 LA
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—application for extension of time to commence or complete development
s 456A hdg sub A2010-4 s 80
s 456A ins A2008-4 s 59
am A2010-4 ss 81-84
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—certain City Area Leases Act 1936 leases
s 456B ins A2010-37 s 31
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—certain Leases (Special Purposes) Act 1925 leases
s 456C ins A2010-37 s 31
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—continued application of certain repealed Acts and provisions
s 457 exp 31 March 2008 (s 457 (11))

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Transitional—applications for certain grants before commencement day

s 458 sub as mod SL2008-2 mod 20.6A (as ins by SL2008-41 s 18)
mod lapsed 2 October 2009 (SL2008-2 mod 20.6A om by A2009-30 s 36)
sub A2009-30 s 30
am A2010-37 s 32, s 33; pars renum R20 LA
exp 31 March 2013 (s 431 (2) (LA s 88 declaration applies))

Transitional—applications for certain grants decided after 6 months

s 459 om as mod SL2008-2 mod 20.6A (as ins by SL2008-41 s 18)
mod lapsed 2 October 2009 (SL2008-2 mod 20.6A om by A2009-30 s 36)
om A2009-30 s 31

Transitional—contracts before commencement day to grant leases

s 459A ins as mod SL2008-2 mod 20.7 (as ins by SL2008-33 s 22)
mod lapsed 2 October 2009 (SL2008-2 mod 20.7 om by A2009-30 s 36)
ins A2009-30 s 32
am A2010-37 s 34; pars renum R20 LA
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—conversion of Commonwealth leases

s 459B ins as mod SL2008-2 mod 20.8 (as ins by SL2008-33 s 23)
mod lapsed 2 October 2009 (SL2008-2 mod 20.8 om by A2009-30 s 36)

Transitional—applications for licences decided promptly

s 460 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—applications for licence decided after 6 months

s 461 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Payment for leases to community organisations

s 461A ins as mod SL2008-2 mod 20.9 (as ins by SL2009-18 s 5)
mod lapsed 2 October 2009 (SL2008-2 mod 20.9 om by A2009-30 s 36)
ins A2009-30 s 33
exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Payment for adjoining concessional leases

s 461B ins as mod SL2008-2 mod 20.9 (as ins by SL2009-18 s 5)
mod lapsed 2 October 2009 (SL2008-2 mod 20.9 om by A2009-30 s 36)

Transitional—controlled activities

pt 15.7 hdg exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—meaning of *construction occupations licensee* in s 345 (4)

s 462 exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

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Transitional—certain controlled activities

s 463	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—administrative

pt 15.8 hdg	exp 31 March 2013 (s 431 (LA s 88 declaration applies))

Transitional—chief planning executive

s 464	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—land agency board members

s 465	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—inspectors

s 466	exp 31 March 2011 (s 431 (1) (LA s 88 declaration applies))

Transitional—plans of management

s 467 hdg	sub A2008-4 s 60
s 467	mod SL2008-2 mod 21.2 (as ins by SL2010-34 s 5) (mod exp 31 March 2013 see SL2008-2 s 411 (2))
	am A2010-37 s 35
	exp 31 March 2013 (s 431 (2))

Transitional—draft plans of management

s 467A	ins as mod SL2008-2 mod 21.3 (as ins by SL2010-34 s 5)
	mod exp 31 March 2013 (see SL2008-2 s 411 (2))

Transitional—Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010

ch 16 hdg	ins A2010-24 s 49
	exp 8 July 2013 (s 470)

Meaning of *commencement day*—ch 16

s 468	ins A2010-24 s 49
	exp 8 July 2013 (s 470)

Transitional regulations

s 469	ins A2010-24 s 49
	exp 8 July 2013 (s 470)

Expiry—ch 16

s 470	ins A2010-24 s 49
	exp 8 July 2013 (s 470)

Transitional—Planning and Development (Lease Variation Charges) Amendment Act 2011

ch 17 hdg	ins A2011-19 s 12
	exp 1 July 2012 (s 472)

Transitional—application for development approval of variation of nominal rent lease

s 471	ins A2011-19 s 12
	exp 1 July 2012 (s 472)

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Expiry—ch 17

s 472	ins A2011-19 s 12 exp 1 July 2012 (s 472)

Reviewable decisions, eligible entities and interested entities

sch 1 hdg	sub A2007-25 amdt 1.146
sch 1	am A2007-25 amdts 1.147-1.149; A2008-4 s 61, s 62, s 69; items renum R2 LA; A2008-28 amdt 3.134; A2010-4 ss 85-90; A2010-37 s 36; items renum R20 LA; A2011-19 s 13; items renum R25 LA

Controlled activities

sch 2	am A2008-4 s 63

Interpretation—sch 4

s 4.1	def ***crest*** ins A2010-56 s 27 def ***lowest point of the general foundations*** ins A2010-56 s 27 def ***normal operating level*** ins A2010-56 s 27 def ***recommended design flood*** ins A2010-56 s 27 def ***threatening process*** sub A2010-56 s 28

Development proposals requiring EIS—activities

sch 4 pt 4.2	sub A2010-56 s 29

Development proposals requiring EIS—areas and processes

sch 4 pt 4.3	sub A2010-56 s 30

Market value leases and leases that are possibly concessional

sch 5	ins A2010-37 s 37 pt 5.3, item 12 exp 7 October 2013 (s 235C (3))

Dictionary

dict	am A2007-25 amdt 1.150; A2008-36 amdt 1.555, amdt 1.556; A2009-20 amdt 3.160; A2009-49 amdt 3.133; A2010-56 s 31; A2011-28 amdt 3.206 def ***accredited valuer*** ins A2011-19 s 14 def ***building surveyor*** ins A2010-24 s 50 def ***business hours*** ins A2008-4 s 64 am A2011-28 amdt 3.207 def ***change of use charge*** om A2011-19 s 15 def ***chargeable variation*** ins A2011-19 s 16 def ***Commonwealth entity*** ins A2010-37 s 38 def ***community organisation*** ins A2010-37 s 38 am A2011-28 amdt 3.208 def ***completed*** sub A2009-20 amdt 3.161 def ***concessional lease*** sub A2010-37 s 39 def ***connected*** am A2007-25 amdt 1.151 def ***crest*** ins A2010-56 s 32 def ***development table*** am A2008-4 s 69

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def ***ends*** ins A2010-4 s 91
def ***environmental significance opinion*** ins A2010-56 s 32
def ***exemption assessment*** ins A2010-24 s 50
def ***exemption assessment D notice*** ins A2010-24 s 50
def ***gross floor area*** ins A2011-19 s 16
def ***interested entity*** ins A2007-25 amdt 1.152
def ***interested person*** om A2007-25 amdt 1.152
def ***inquiry panel*** ins A2008-28 amdt 3.135
def ***land rent lease*** ins A2008-16 amdt 1.11
def ***lease variation charge*** ins A2011-19 s 16
def ***lowest point of the general foundations*** ins A2010-56 s 32
def ***LVC determination*** ins A2011-19 s 16
def ***market value lease*** sub A2010-37 s 40
def ***memorial*** ins A2010-37 s 41
def ***monitoring warrant*** ins A2008-4 s 64
def ***nominal rent*** ins A2010-4 s 92
def ***nominal rent lease*** am A2010-4 s 93
def ***normal operating level*** ins A2010-56 s 32
def ***occupier*** am A2007-25 amdt 1.153
def ***offence*** am A2007-25 amdt 1.153
def ***original decision*** sub A2011-19 s 17
def ***possibly concessional*** ins A2010-37 s 41
def ***premises*** am A2007-25 amdt 1.153
def ***prohibition notice*** also ins A2008-4 s 64
om R2 LA
def ***public consultation period*** (orig def) sub A2011-23 s 35
def ***public consultation period*** also ins A2008-4 s 64
om R2 LA
def ***Public Health Act Minister*** ins A2007-25 amdt 1.154
def ***public notification period*** ins A2011-23 s 36
def ***publicly notifies*** also ins A2008-4 s 64
om R2 LA
def ***recommended design flood*** ins A2010-56 s 32
def ***reconsideration application*** sub A2011-19 s 18
def ***rectification work order*** ins A2008-4 s 64
def ***regulated tree*** ins A2008-4 s 64
def ***relevant agency*** ins A2010-56 s 32
def ***remote application*** ins A2008-4 s 64
def ***remote order*** ins A2008-4 s 64
def ***remote warrant*** ins A2008-4 s 64
def ***s 125-related EIS*** ins A2007-25 amdt 1.154
def ***s 276E chargeable variation*** ins A2011-19 s 19
def ***s 277 chargeable variation*** ins A2011-19 s 19
def ***search warrant*** ins A2008-4 s 64
def ***significant*** ins A2010-56 s 32
def ***single dwelling house lease*** ins A2009-20 amdt 3.162

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def ***technical variation*** ins A2009-20 amdt 3.162
def ***territory entity*** ins A2010-37 s 41
def ***threatening process*** sub A2010-56 s 33
def ***variation*** am A2010-4 s 94
def ***working out statement*** ins A2011-19 s 19
def ***works assessor*** ins A2010-24 s 50

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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. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 27 Sept 2007	27 Sept 2007– 30 Mar 2008	A2007-26	new Act
R2 31 Mar 2008	31 Mar 2008– 31 Mar 2008	SL2008-8	amendments by A2007-25, A2007-26 and A2008-4 and modification by SL2008-2 as amended by SL2008-8
R2 (RI) 5 Aug 2008	31 Mar 2008– 31 Mar 2008	SL2008-8	reissue for retrospective modification by SL2008-2 as amended by SL2008-33
R2 (RI No 2) 16 Sept 2008	31 Mar 2008– 31 Mar 2008	SL2008-8	further reissue for retrospective modification by SL2008-2 as amended by SL2008-41
R3 1 Apr 2008	1 Apr 2008– 30 June 2008	SL2008-8	commenced expiry

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R3 (RI) 5 Aug 2008	1 Apr 2008– 30 June 2008	SL2008-8	reissue for retrospective modification by SL2008-2 as amended by SL2008-33
R3 (RI No 2) 16 Sept 2008	1 Apr 2008– 30 June 2008	SL2008-8	further reissue for retrospective modification by SL2008-2 as amended by SL2008-41
R4 1 July 2008	1 July 2008– 5 Aug 2008	A2008-16	amendments by A2008-16 and modifications by SL2008-2 as amended by SL2008-27
R4 (RI) 5 Aug 2008	1 July 2008– 5 Aug 2008	A2008-16	reissue for retrospective modification by SL2008-2 as amended by SL2008-33
R4 (RI No 2) 16 Sept 2008	1 July 2008– 5 Aug 2008	A2008-16	further reissue for retrospective modification by SL2008-2 as amended by SL2008-41
R5 6 Aug 2008	6 Aug 2008- 25 Aug 2008	SL2008-33	modifications by SL2008-2 as amended by SL2008-33
R5 (RI) 16 Sept 2008	6 Aug 2008- 25 Aug 2008	SL2008-33	reissue for retrospective modification by SL2008-2 as amended by SL2008-41

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Republication No and date	Effective	Last amendment made by	Republication for
R6 26 Aug 2008	26 Aug 2008– 15 Sept 2008	A2008-28	amendments by A2008-28
R6 (RI) 16 Sept 2008	26 Aug 2008– 15 Sept 2008	A2008-28	reissue for retrospective modification by SL2008-2 as amended by SL2008-41
R7 16 Sept 2008	16 Sept 2008– 1 Feb 2009	SL2008-41	modifications by SL2008-2 as amended by SL2008-41
R8 2 Feb 2009	2 Feb 2009– 30 Mar 2009	SL2008-41	amendments by A2008-36
R9 31 Mar 2009	31 Mar 2009– 31 Mar 2009	SL2008-41	amendments by A2008-45
R10 1 Apr 2009	1 Apr 2009– 7 May 2009	SL2008-41	commenced expiry
R11* 8 May 2009	8 May 2009– 30 June 2009	SL2009-18	modifications by SL2008-2 as amended by SL2009-18
R12 1 July 2009	1 July 2009– 23 July 2009	SL2009-35	modifications by SL2008-2 as amended by SL2009-35
R13 24 July 2009	24 July 2009– 21 Sept 2009	SL2009-38	modifications by SL2008-2 as amended by SL2009-38
R14 22 Sept 2009	22 Sept 2009– 1 Oct 2009	A2009-20	amendments by A2009-20
R15 2 Oct 2009	2 Oct 2009– 3 Oct 2009	A2009-30	amendments by A2009-30
R16 4 Oct 2009	4 Oct 2009– 16 Dec 2009	A2009-30	commenced expiry

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R17 17 Dec 2009	17 Dec 2009– 25 Feb 2010	A2009-49	amendments by A2009-49
R18 26 Feb 2010	26 Feb 2010– 12 Aug 2010	A2010-4	amendments by A2010-4
R19 13 Aug 2010	13 Aug 2010– 6 Oct 2010	SL2010-34	modifications by SL2008-2 as amended by SL2010-34
R20 7 Oct 2010	7 Oct 2010– 22 Nov 2010	A2010-37	amendments by A2010-37
R21 23 Nov 2010	23 Nov 2010– 31 Jan 2011	A2010-42	amendments by A2010-42
R22 1 Feb 2011	1 Feb 2011– 28 Feb 2011	A2010-56	amendments by A2010-56
R23 1 Mar 2011	1 Mar 2011– 31 Mar 2011	A2011-3	amendments by A2011-3
R24 1 Apr 2011	1 Apr 2011– 30 June 2011	A2011-3	expiry of certain transitional provisions in ch 15
R25 (RI) 17 Apr 2012	1 July 2011– 6 July 2011	A2011-22	amendments by A2011-19 and A2011-22 reissue for textual correction in s 276B
R26 (RI) 17 Apr 2012	7 July 2011– 7 July 2011	A2011-23	amendments by A2011-23 reissue for textual correction in s 276B
R27 (RI) 17 Apr 2012	8 July 2011– 20 Sept 2011	A2011-23	amendments by A2010-24 and A2011-23 reissue for textual correction in s 276B

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6 Modifications of republished law with temporary effect

The following modifications have not been included in this republication:

Planning and Development Regulation 2008 SL2008-2 (as am by SL2010-34)

Schedule 21 Modification of Act

(see s 411)

[21.1] Section 431

omit

and section 467

substitute

, section 467 and section 467A

[21.2] Section 467 (4)

omit

[21.3] New section 467A

insert

467A Transitional—draft plans of management

(1) This section—

(a) applies if—

(i) a draft plan of management was prepared under the repealed Act; and

(ii) immediately before commencement day the Minister had not approved the draft plan under the repealed Act, section 204 (1) (a) (Minister's powers); but

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(b) does not apply if the draft plan was withdrawn under the repealed Act, section 204 (2) (b).

(2) The draft plan of management is taken to have been prepared under this Act.

(3) If, in preparing the draft plan of management—

(a) the draft plan complied with the repealed Act, section 196 (Content), the plan is taken to have complied with this Act, section 319 (Content of plans of management); and

(b) the conservator of flora and fauna complied with the repealed Act, section 197 (Preparation), the proponent of the draft plan is taken to have complied with this Act, section 320 (Preparation of plans of management); and

(c) an environmental assessment was done or a report of an inquiry was made under the repealed Act, section 199 (Environmental assessments and inquiries), the assessment or report is taken to be a strategic environmental assessment or a planning report under this Act, section 322 (Planning reports and SEAs—draft plans of management); and

(d) the conservator of flora and fauna complied with the repealed Act, section 199 (Environmental assessments and inquiries), the proponent of the draft plan is taken to have complied with this Act, section 322 (Planning reports and SEAs—draft plans of management); and

(e) the conservator of flora and fauna complied with the repealed Act, section 200 (Public consultation), the proponent of the draft plan is taken to have complied with this Act, section 323 (Public consultation about draft plans of management); and

(f) the draft plan was revised under the repealed Act, section 201 (Revision), the plan is taken to have been revised under this Act, section 324 (Revision of draft plans of management); and

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(g) the conservator of flora and fauna complied with the repealed Act, section 202 (Submission to Minister), the proponent of the draft plan is taken to have complied with this Act, section 325 (Giving draft plans of management to Minister); and

(h) the draft plan was given to and considered by a Legislative Assembly committee under the repealed Act, section 203 (Consideration of plan of management by Legislative Assembly committee), the plan is taken to have been given to and considered by a Legislative Assembly committee under this Act, section 326 (Consideration of draft plans of management by Legislative Assembly committee); and

(i) the Legislative Assembly committee made a recommendation under the repealed Act, section 203 (Consideration of plan of management by Legislative Assembly committee), the recommendation is taken to have been made by the committee, under this Act, section 326 (Consideration of draft plans of management by Legislative Assembly committee); and

(j) the Minister considered the recommendation made by the Legislative Assembly committee under the repealed Act, section 204 (Minister's powers), the Minister is taken to have considered the recommendation under this Act, section 327 (2) (Minister's powers on receiving draft plans of management); and

(k) the Minister referred the draft plan to the conservator of flora and fauna under the repealed Act, section 204 (1) (b) (Minister's powers), the draft plan is taken to have been referred to the proponent of the draft plan under this Act, section 327 (3) (b) (Minister's powers on receiving draft plans of management); and

(l) a deferral was notified under the repealed Act, section 204 (2) (Minister's powers), the deferral is taken to have been notified under this Act, section 327 (4) (Minister's powers on receiving draft plans of management); and

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(m) the conservator of flora and fauna complied with the repealed Act, section 205 (Referral back to conservator), the proponent of the draft plan is taken to have complied with this Act, section 328 (Referral of draft plans of management to proponent); and

(n) the draft plan was deferred and revived under the repealed Act, section 206 (Notice of revival of deferred draft plan of management), the draft plan is taken to have been revived under this Act, section 329 (Notice of revival of deferred draft plans of management).

(4) This Act applies in relation to the draft plan of management—

(a) as if a reference in the draft plan to the *Land (Planning and Environment) Act 1991* or the Land Act were a reference to this Act; and

(b) as if a reference to schedule 1 of the *Land (Planning and Environment) Act 1991* or the Land Act were a reference to this Act, schedule 3; and

(c) as if a reference to section 197 of the *Land (Planning and Environment) Act 1991* or the Land Act were a reference to this Act, section 320 (Preparation of plans of management); and

(d) as if a reference to part 4 of the *Land (Planning and Environment) Act 1991* or the Land Act were a reference to this Act, chapter 8 (Environmental impact statements and inquiries); and

(e) with any necessary change and any change prescribed by regulation.

(5) In this section:

draft plan of management includes a draft variation of a plan of management.

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7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Personal Property Securities Act 2010 A2010-15 sch 1 pt 1.2

[1.2] New section 417 (3)

insert

(3) For the *Personal Property Securities Act 2009* (Cwlth), section 10, definition of ***personal property***, a right granted by licence under subsection (1) is not personal property.

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