



Australian Capital Territory

Planning, Building and Environment Legislation Amendment Act 2012

A2012-23

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Australian Capital Territory

Planning, Building and Environment Legislation Amendment Act 2012

A2012-23

An Act to amend legislation about planning, building and the environment

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

Part 1 Preliminary

1 Name of Act

This Act is the *Planning, Building and Environment Legislation Amendment Act 2012*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the following legislation:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Unit Titles Act 2001*
- *Unit Titles Regulation 2001*.

Part 2 Building Act 2004

4 Building approval applications New section 26 (2) (h)

before the notes, insert

- (h) if the development to which the building work relates is a development proposal to which the *Planning and Development Regulation 2008*, schedule 1, section 1.19 applies—be accompanied by a written notice that the section has been complied with within 2 years before the day the application is made.

Example—written notice

a copy of any form prepared for s 1.19 under the *Planning and Development Act 2007*, s 425 and a statement about how and when it was given

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 Building code Section 136 (1), definition of *building code*

substitute

building code means—

- (a) the Building Code of Australia prepared and published by the Australian Building Codes Board as amended from time to time by—
- (i) the Australian Building Codes Board; and
 - (ii) the Australian Capital Territory Appendix to the Building Code of Australia; and
- (b) a document prescribed by regulation.

Part 3 Building (General) Regulation 2008

6 Section 7B heading

substitute

7B Additional details and material for exemption assessment application—Act, s 14 (3)

7 New section 7B (2)

insert

- (2) If building work the subject of an application for an exemption assessment relates to a development proposal to which the *Planning and Development Regulation 2008*, schedule 1, section 1.19 applies, the application must be accompanied by a written notice that the section has been complied with within 2 years before the day the application is made.

Example—written notice

a copy of any form prepared for s 1.19 under the *Planning and Development Act 2007*, s 425 and a statement about how and when it was given

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).

8 Section 10

substitute

10 Number of copies of plans—Act, s 26 (2) (a)

The number of copies prescribed is—

- (a) 1 in electronic form; and
(b) if the certifier asks for a paper copy—1 copy.

9 New section 43A

in part 5, insert

**43A Documents forming part of building code—Act, s 136 (1),
def *building code*, par (b)**

A volume of the National Construction Code series is prescribed if the volume—

- (a) is published by the Australian Building Codes Board; and
- (b) includes a notation that it forms part of the Building Code of Australia.

Part 4 Planning and Development Act 2007

10 Meaning of *associated document*—pt 3.6 New section 30 (1) (da)

insert

- (da) an estate development plan required under section 139 (2) (n) to accompany the application;

11 Territory plan New section 46 (2) and note

after the note, insert

- (2) The territory plan is a notifiable instrument.

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

12 Public availability of territory plan Section 47

omit

13 Public consultation—notification Section 63 (1) (c)

omit

on the day after

substitute

10 working days after

14 Section 63 (5)

substitute

- (5) The planning and land authority must also—
- (a) publish the consultation notice and any extension notice in a daily newspaper; and
 - (b) for a draft plan variation prescribed by regulation—give a copy of the consultation notice and any extension notice to each person prescribed by regulation.

Example

draft plan variation to change an area from CZ6 zone to RZ4 zone

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).

- (5A) A variation of the territory plan under this part is not invalid only because the planning and land authority has not complied with subsection (5) (b).

**15 Partial rejection of plan variations by Legislative Assembly
New section 84 (2A) and (2B)**

insert

- (2A) The planning and land authority must, in relation to each provision of the plan variation that is rejected, prepare a notice stating that the provision of the plan variation has been rejected.
- (2B) The notice is a notifiable instrument.

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

**16 Partial rejection of plan variations—publication etc
New section 85 (1) (aa)**

before paragraph (a), insert

(aa) a rejection notice under section 84 (2A); or

**17 What are *technical amendments* of territory plan?
New section 87 (h)**

insert

(h) a variation to relocate a provision within the territory plan if the substance of the provision is not changed.

Example

relocating an area-specific policy from a development code to a precinct code

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).

**18 Is consultation needed for technical amendments?
New section 88 (1) (d)**

insert

(d) a variation to relocate a provision within the territory plan if the substance of the provision is not changed.

**19 Limited consultation
Section 90 (2) (d)**

omit

on the day after

substitute

10 working days after

20 **What is an *estate development plan*?**
Section 94 (1), new note

insert

Note A development application for the development of an estate must be accompanied by an estate development plan (see s 139 (2) (n)).

21 **Section 133**

substitute

133 **What is an *exempt development*?**

(1) In this Act:

exempt development means development that is exempt from requiring development approval under—

- (a) the relevant development table; or
- (b) section 134; or
- (c) a regulation.

Note 1 Development tables are dealt with in s 54.

Note 2 ***Relevant development table***, for a development proposal—see the dictionary.

Note 3 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).

(2) However, for paragraphs (a) and (c), ***exempt development*** does not include—

- (a) development if a development application for the proposed development is assessable in the impact track; or

- (b) development on land if—
- (i) the development is inconsistent with a provision of a development approval for other development on the land; and
 - (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 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).

22 Exemption assessments and notices
Section 138D (2) (b)

substitute

- (b) issue a notice (an *exemption assessment D notice*)—
- (i) stating whether the development is an exempt development under section 133; and
 - (ii) including anything else prescribed by regulation; and

23 New section 138D (2A)

after the notes, insert

- (2A) A regulation under subsection (2) (b) (ii) may prescribe—
- (a) any document that must be attached to the exemption assessment D notice; and
 - (b) information required to be shown in the document.

**24 Form of development applications
Section 139 (2) (h)**

before

an assessment

insert

be accompanied by

25 New section 139 (2) (n)

before the notes, insert

- (n) if the application is for the development of an estate—be accompanied by an estate development plan for the estate.

**26 End of development approvals for lease variations
New section 185 (2) (b) (iii)**

before the notes, insert

- (iii) if, in relation to a lease variation charge for the approval—
 - (A) a reconsideration application is made—the period of 2 years starting on the day the decision on reconsideration is made; or

- (B) an application for review to the ACAT is made—the period of 2 years starting on the day the application is decided, withdrawn, dismissed or struck out; or
- (C) an appeal to a court is made—the period of 2 years starting on the day the appeal ends.

27 Section 287

substitute

287 No subdivision of rural leases during holding period

The planning and land authority must not consent to the subdivision of a lease to which section 284 applies during the holding period.

287A Consolidation of rural leases during holding period

The planning and land authority may consent to the consolidation of a lease to which section 284 applies during the holding period.

**28 Transfer of land subject to building and development provision
Section 298 (4)**

omit

holding

**29 Reviewable decisions, eligible entities and interested entities
Schedule 1, item 12, column 2**

substitute

decision under s 193 (1) (b) (i) on reconsideration, unless the development application to which the reconsideration relates is exempted by regulation.

Part 5 Planning and Development Regulation 2008

30 New chapter 1A

insert

Chapter 1A Draft plan variations

6 Draft plan variations to be notified—Act, s 63 (5) (b)

A draft plan variation that changes a zone from 1 zone category to another zone category, apart from a variation that changes the zone to any of the following zones, is prescribed:

- (a) PRZ1—urban open space zone;
- (b) NUZ3—hills, ridges and buffer zone;
- (c) NUZ4—river corridor zone;
- (d) NUZ5—mountains and bushland zone.

Note Zones in the territory plan fall into the following categories:

- residential (RZ)
- commercial (CZ)
- community facility (CF)
- parks and recreation (PRZ)
- transport and services (TSZ)
- non-urban zones (NUZ)
- industrial zones (IZ).

Example

a draft plan variation to change a zone from commercial (CZ) category to residential (RZ) category

Note An example is part of the regulation, 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 People to be notified—Act, s 63 (5) (b)

- (1) The following people are prescribed:
 - (a) a lessee of an adjoining section;
 - (b) if land adjoining the area to which the draft variation plan applies is a rural block—a lessee of the adjoining rural block.
- (2) In this section:

adjoining—see the *Planning and Development Act 2007*, section 153.

section, in relation to land—see the *Districts Act 2002*, dictionary.

**31 Prescribed development proposal for community consultation—Act, s 138AE
New section 20A (1) (d)**

insert

- (d) a variation of a lease to remove its concessional status.

32 New section 22A

insert

**22A Exemption assessment applications—Act,
s 138B (2) (a) (iii)**

- (1) This section applies if an application is made for an exemption assessment relating to a development proposal to which schedule 1, section 1.19 applies.

- (2) The application must include a written notice that the section has been complied with.

Example—written notice

a copy of any form prepared for s 1.19 under the Act, s 425 and a statement about how and when it was given

Note An example is part of the regulation, 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).

33 Section 23

substitute

23 Exemption assessment D notices—Act, s 138D (2) (b) (ii)

The following are prescribed:

- (a) any information that was used by the works assessor or building surveyor in assessing whether the development is exempt or not;
- (b) if the works assessor or building surveyor assesses that the development is exempt—whether the development is exempt under—
 - (i) a development table, and if so, which table; or
 - (ii) the Act, section 134; or
 - (iii) a regulation, and if so, which regulation;
- (c) the works assessor or building surveyor's name, signature and licence number;
- (d) the date of the notice.

**24 Exemption assessment D notice—attached documents—
Act, s 138D (2A) (a) and (b)**

- (1) The following documents are prescribed:
 - (a) a copy of any plans that were used by the works assessor or building surveyor in assessing whether the development is exempt or not;
 - (b) if the works assessor or building surveyor assesses that a single dwelling is exempt under schedule 1, section 1.100 (Compliant single dwellings)—a copy of the survey certificate that was used by the works assessor or building surveyor in assessing that the dwelling is exempt.
- (2) If the works assessor or building surveyor assesses that the development is exempt—
 - (a) the exemption must be marked on, or attached to, or partly marked on or partly attached to, each page of the plans used by the works assessor or building surveyor in the assessment; and
 - (b) the works assessor or building surveyor must initial, date and mark the works assessor or building surveyor's licence number on each page of the plans.
- (3) However, if, because of the size of the plans, it is impractical to mark the exemption on each page of the plans, the works assessor or building surveyor may, instead of marking the exemption under subsection (2) (a), mark each page of the plans with—
 - (a) the works assessor or building surveyor's initials and licence number and the date; and
 - (b) an indication that the details of the exemption are in the exemption assessment D notice.

- (4) The pages of any document attached to an exemption assessment D notice must be numbered consecutively through each document, starting with the number 1 and each page must state the total number of pages comprising the attached documents.

Example

An exemption assessment B notice has 3 attached documents that total 25 pages. Each page of the attachments, starting from the first page, is numbered as 'page 1 of 25', 'page 2 of 25' and so on, until the last page of the final attachment which is numbered 'page 25 of 25'.

Note An example is part of the regulation, 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).

34 Schedule 1, new part 1.2A

insert

Part 1.2A Exempt developments—certain development proposals

1.19 Information about certain development proposals

- (1) This section applies—
- (a) in relation to a development proposal for—
- (i) a development mentioned in section 1.100 or section 1.100A; or
 - (ii) a development mentioned in section 1.100B if the development is not required to be carried out urgently to address a risk of death or injury to a person, serious harm to the environment or significant damage to property; and

(b) if—

- (i) a place (the *adjoining place*) other than unleased land adjoins the place (the *developing place*) to which the development proposal relates; and
- (ii) the adjoining place has 1 or more dwellings on it.

Note Dwelling—see s 5.

- (2) The proponent of the development proposal must take reasonable steps to give written information about the proposal to an occupier (a *resident*) of each dwelling.

Note 1 If a form is approved under the Act, s 425 for this provision, the form must be used.

Note 2 If particular information is to be included in the form for the written information, or a particular document must be attached to or given with the form, the form is properly completed only if the requirement is complied with (see Legislation Act, s 255 (5)).

- (3) However, the proponent need not give written information under subsection (2) to a resident of a dwelling on an adjoining place if the resident is the proponent or a person for whom the proponent has been appointed to act as agent.
- (4) The proponent may give the written information to a resident of a dwelling by leaving it at the dwelling.

Examples

- 1 if the dwelling is an apartment—leaving it in the letterbox for the apartment
- 2 placing it under a door that gives access into the dwelling

Note 1 The written information may be given in other ways (see Legislation Act, pt 19.5).

Note 2 An example is part of the regulation, 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:

adjoins—see the *Planning and Development Act 2007*, section 153.

resident, of a dwelling, includes a person believed on reasonable grounds to be occupying the dwelling.

Note 1 If application is made for an exemption assessment D notice relating to a development proposal to which this section applies, the application must include a written notice that this section was complied with (see s 22A).

Note 2 If application is made for building approval for building work, and the development to which the building work relates is a development proposal to which this section applies, the application must be accompanied by a written notice that this section was complied with within 2 years before the day the application is made (see *Building Act 2004*, s 26 (2) (h)).

Note 3 If building work the subject of an application for an exemption assessment B notice relates to a development proposal mentioned in s 1.19 (1) (a) (i) to which this section applies, the application must be accompanied by a written notice that this section was complied with within 2 years before the day the application is made (see *Building (General) Regulation 2008*, s 7B (2)).

35 Schedule 1, section 1.100

substitute

1.100 Compliant single dwellings—old residential land

- (1) Building a single dwelling (the ***dwelling***) or altering a single dwelling (the ***alteration***) on a block if—
- (a) the dwelling will be the only dwelling on the block; and
 - (b) a dwelling has previously been built on the block; and
 - (c) the dwelling or alteration, as built, complies with—
 - (i) the relevant rules in any relevant precinct code that would apply if the dwelling or alteration were not exempt; and

- (ii) to the extent that they are not inconsistent with the relevant rules in a relevant precinct code—the relevant rules in the Residential Zones—Single Dwelling Housing Development Code that would apply if the dwelling or alteration were not exempt (other than rule 33 and rule 66); and
 - (iii) to the extent that they are not inconsistent with the relevant rules in a relevant precinct code or the Residential Zones—Single Dwelling Housing Development Code—the prescribed general exemption criteria; and
- (d) the dwelling or alteration will be in a residential zone; and
- (e) section 1.19 (Information about certain development proposals) has been complied with in relation to building or altering the dwelling.

Note 1 **Relevant rules**, for a development proposal—see the Act, dictionary. See also s (2).

Note 2 Other territory laws, including the *Heritage Act 2004*, must be complied with (see s 1.4 and s 1.14).

- (2) 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.
- (3) In this section:

prescribed general exemption criteria means the general exemption criteria, other than the following:

- (a) section 1.17 (Criterion 7—no multiple occupancy dwellings);
- (b) section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

1.100AA Compliant single dwellings—new residential land

- (1) Building a single dwelling on a block if—
- (a) the dwelling will be the only dwelling on the block; and
 - (b) another dwelling has not been built on the block; and
 - (c) if the block is a preliminary block—the dwelling is built by the lessee of the holding lease; and
 - (d) the dwelling as built complies with—
 - (i) the relevant rules in any relevant precinct code that would apply if the dwelling were not exempt; and
 - (ii) to the extent that they are not inconsistent with the relevant rules in a relevant precinct code—the relevant rules in the Residential Zones—Single Dwelling Housing Development Code that would apply if the dwelling were not exempt (other than rule 33 and rule 66); and
 - (iii) to the extent that they are not inconsistent with the relevant rules in a relevant precinct code or the Residential Zones—Single Dwelling Housing Development Code—the prescribed general exemption criteria; and
 - (e) the dwelling will be in a residential zone.
- Note 1* **Relevant rules**, for a development proposal—see the Act, dictionary. See also s (3).
- Note 2* Other territory laws, including the *Heritage Act 2004*, must be complied with (see s 1.4 and s 1.14).
- (2) For subsection (1) (c), a dwelling is taken to be **built** by the lessee even if some or all of the building work is done by an employee or contractor of the lessee.

(3) 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.

(4) In this section:

block includes a preliminary block.

preliminary block—land is taken to be a **preliminary block** if—

- (a) the land is part of a holding lease; and
- (b) a development application for the development of an estate has been approved in relation to the lease; and

Note A development application for the development of an estate must be accompanied by an estate development plan (see Act, s 139 (2) (n)).

- (c) the estate development plan accompanying the development application identifies the land as a block; and
- (d) information about the boundaries of, and the distinguishing name or number for the land is recorded in the database maintained by the planning and land authority under the *Districts Act 2002*, section 17 (Digital cadastral database); and
- (e) the land is not otherwise a block under the *Districts Act 2002*.

Note **Estate development plan**—see the Act, s 94.

prescribed general exemption criteria means the general exemption criteria, other than the following:

- (a) section 1.17 (Criterion 7—no multiple occupancy dwellings);
- (b) section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

36 Schedule 1, section 1.100A heading

substitute

1.100A Otherwise non-compliant single dwellings—old residential land**37 Schedule 1, new section 1.100A (1) (c)**

insert

- (c) section 1.19 (Information about certain development proposals) has been complied with in relation to the building or altering of the dwelling.

38 Schedule 1, section 1.100A (5), definitions of *block* and *preliminary block*

omit

39 Schedule 1, new section 1.100AB

insert

1.100AB Otherwise non-compliant single dwellings—new residential land

- (1) Building a single dwelling on a block if—
- (a) the building of the dwelling would be exempt under section 1.100AA, apart from the encroachment of the dwelling in 1 or more of the following ways:
- (i) beyond the front, side or rear setback required under the defined rules;
 - (ii) beyond the building envelope that applies, under the defined rules, to the block where the dwelling is being built;

- (iii) into the minimum private open space required under the defined rules; and
 - (b) the planning and land authority declares (an *exemption declaration*) that the dwelling does not stop being an exempt development because of a non-compliance with the defined rules identified in the declaration.
- (2) An exemption declaration must state the following distances (each of which is an *extended distance*):
- (a) the distance by which any setback for the dwelling that is required by the defined rules, is reduced to allow for the encroachment;
 - (b) the distance that any element of the dwelling may extend beyond the building envelope that applies, under the defined rules, to the block where the dwelling is being built;
 - (c) the distance by which any element of the dwelling may encroach into the minimum private open space required under the defined rules.
- (3) Not later than 10 working days after a person applies to the planning and land authority for an exemption declaration the authority must—
- (a) make the declaration; or
 - (b) refuse to make the declaration.

Note 1 If a form is approved under the Act, s 425 for this provision, the form must be used.

Note 2 A fee may be determined under the Act, s 424 for this provision.

Note 3 The requirement to make a decision under s (4) does not lapse if the 10-day time limit is not met (see Legislation Act, s 152).

- (4) However, the planning and land authority must not make an exemption declaration in relation to a non-compliant dwelling unless satisfied that—
- (a) the non-compliance is minor; and
 - (b) building the dwelling other than in accordance with the defined rules—
 - (i) will not adversely affect someone other than the applicant; and
 - (ii) will not increase the environmental impact of the dwelling more than minimally.

- (5) In this section:

block—see section 1.100AA (4).

defined rules means—

- (a) the relevant rules in any relevant precinct code that would apply if the dwelling were not exempt; or
- (b) the relevant rules in the Residential Zones—Single Dwelling Housing Development Code that would apply if the dwelling were not exempt.

preliminary block—see section 1.100AA (4).

setback—see the territory plan (13 Definitions).

40 Schedule 1, section 1.100B, except note

substitute

1.100B Single dwellings—demolition

The demolition of a single dwelling, or part of a single dwelling, if—

- (a) the demolition complies with section 1.14 (Criterion 4—heritage and tree protection); and
- (b) if section 1.19 (Information about certain development proposals) applies in relation to the demolition—that section has been complied with in relation to the demolition.

Part 6 Unit Titles Act 2001

41 Unit title applications—general requirements New section 17 (1A)

before subsection (1), insert

- (1A) This section applies to a parcel if the remaining term of the parcel's lease is at least 50 years.

42 Section 17 (1)

omit

a parcel

substitute

the parcel

Part 7 Unit Titles Regulation 2001

43 Unit title assessment report—contents—Act, s 22B (5) (a) Section 2D (1) (n) (i)

substitute

- (i) there is a letter box—
 - (A) for a units plan that comprises 3 or more units used for residential purposes—for each unit and for the owners corporation; and
 - (B) for a units plan that comprises less than 3 units used for residential purposes—for each unit; and
 - (C) for a units plan that comprises units used for commercial purposes—for the owners corporation; and
 - (D) for a units plan that comprises units used for residential purposes and units used for commercial purposes—for each unit used for a residential purpose and for the owners corporation; and

44 Permissible unit subsidiaries—Act, s 19 Section 3 (2)

omit

(xiv)

substitute

(xiii)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 March 2012.

2 Notification

Notified under the Legislation Act on 28 May 2012.

3 Republications of amended laws

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

I certify that the above is a true copy of the Planning, Building and Environment Legislation Amendment Bill 2012, which was passed by the Legislative Assembly on 8 May 2012.

Clerk of the Legislative Assembly

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