



Australian Capital Territory

Planning and Development (Community Concessional Leases) Amendment Act 2019

A2019-28

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Planning and Development (Community Concessional Leases) Amendment Act 2019

A2019-28

An Act to amend the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*, and for other purposes

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

J2019-17

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Planning and Development (Community Concessional Leases) Amendment Act 2019*.

2 Commencement

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

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

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

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

3 Legislation amended

This Act amends the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*.

Note This Act also amends other legislation (see sch 1).

Part 2 Planning and Development Act 2007

4 Restriction on direct sale by authority Section 240 (2) (a) and (b)

substitute

- (a) the grant meets—
- (i) 1 or more of the grant objectives; or
 - (ii) for a community concessional lease—the objective mentioned in subsection (4), definition of ***grant objective***, paragraph (f) (the ***community concessional lease objective***); and

Note ***Community concessional lease***—see s 253A.

- (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—
 - (A) is unlikely to meet the objective to the same extent as the grant by direct sale of the lease; or
 - (B) for a community concessional lease—is unlikely to meet the community concessional lease objective to the same extent as the grant by direct sale of the lease.

5 New section 240 (2A) and (2B)

insert

- (2A) If the Executive approves the grant of a community concessional lease under subsection (2), the approval must—
- (a) state the reasons why the grant is not to be made by tender under section 253F (Grant of community concessional lease by tender); and
 - (b) identify the community concessional lease use for which the land must be used.

Note 1 **Community concessional lease use**—see s 253B.

Note 2 The community concessional lease use for which the land must be used is the required use—see s 253A, def **required use**.

- (2B) A statement of reasons under subsection (2A) is a notifiable instrument.

Note 1 For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

Note 2 A notifiable instrument must be notified under the [Legislation Act](#).

6 Section 240 (4), definition of *grant objective*, new paragraph (f)

insert

- (f) to deliver a service that provides ongoing benefits to the community.

**7 Payment for leases
New section 246 (2) (ca)**

insert

- (ca) the grant of a community concessional lease by—
- (i) direct sale in accordance with section 253C (Grant of community concessional lease by direct sale); or
 - (ii) tender in accordance with section 253F (Grant of community concessional lease by tender); or

Note **Community concessional lease**—see s 253A.

8 Section 246 (2) (e)

omit

9 New part 9.2A

insert

Part 9.2A Grants of concessional leases to community organisations for community uses

253A Definitions

In this Act:

community concessional lease means a lease granted—

- (a) as a concessional lease; and
- (b) to a community organisation; and
- (c) for 1 or more required uses.

community concessional lease provisions—see section 253G.

district—see the *Districts Act 2002*, dictionary.

future community land—see section 253D (2).

potential use, for an area of future community land—see section 253D (3) (a).

required use, for land comprised in a community concessional lease means—

- (a) if the lease is granted by direct sale—the community concessional lease use identified by the Executive under section 240 (2A) (b); and
- (b) if the lease is granted by tender—the potential use identified under section 253E (2) (b).

253B Meaning of *community concessional lease use*

- (1) In this Act, each of the following community uses is a *community concessional lease use*:
 - (a) community activity centre;
 - (b) community theatre;
 - (c) cultural facility;
 - (d) education establishment;
 - (e) indoor recreation facility;
 - (f) outdoor education establishment;
 - (g) outdoor recreation facility;
 - (h) place of worship;
 - (i) playing field;

- (j) religious associated use;
 - (k) a community use prescribed by regulation.
- (2) A term used in subsection (1) has the same meaning as it has in the [territory plan](#).
- (3) In this section:

community use includes a minor use incidental to the community use.

253C Grant of community concessional lease by direct sale

The planning and land authority may grant a community concessional lease by direct sale only if—

- (a) the Executive approves the grant under section 240 (2) (Restriction on direct sale by authority); and
- (b) the lease includes all the community concessional lease provisions.

Note The lease must also include a statement that the lease is a concessional lease (see s 238 (2) (a) (i)).

253D Statement of future community land for stated districts

- (1) The planning and land authority may, for a stated district, make a statement setting out the government's priorities in relation to community use for land in the district.
- (2) The statement must identify 1 or more areas of territory land that may be leased as a community concessional lease (*future community land*).

- (3) The statement—
- (a) must identify a community concessional lease use for which each area of future community land is to be used (the *potential use*); and
 - (b) may state that particular future community land is to be used only for the stated potential use.
- (4) The statement is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

253E Notification of future community land for grant of community concessional lease by tender

- (1) This section applies if the planning and land authority intends to grant a community concessional lease by tender.
- (2) The planning and land authority must identify—
- (a) the parcel of land that is to be comprised in the community concessional lease; and
 - (b) the potential use for which the land must be used.

Note The potential use for which the land must be used is the required use—see s 253A, def *required use*.

- (3) The parcel of land to be comprised in the community concessional lease must be—
- (a) within an area of future community land; and
 - (b) identified by reference to the block and section number and division of the land.
- (4) The identification of the land to be comprised in the community concessional lease, and the required use for the lease, is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

(5) In this section:

block—see the *Districts Act 2002*, dictionary.

division—see the *Districts Act 2002*, dictionary.

section—see the *Districts Act 2002*, dictionary.

253F Grant of community concessional lease by tender

The planning and land authority may grant a community concessional lease by tender only if—

- (a) the authority has identified the parcel of land to be comprised in the community concessional lease, and the required use for the lease, under section 253E; and
- (b) the tender process is undertaken in the way prescribed by regulation; and
- (c) the authority is satisfied that the person to whom the lease is granted meets the criteria prescribed by regulation; and
- (d) the lease includes all the community concessional lease provisions.

Note The lease must also include a statement that the lease is a concessional lease (see s 238 (2) (a) (i)).

253G Meaning of *community concessional lease provisions*

In this Act:

community concessional lease provisions, for a community concessional lease, means the following provisions:

- (a) a provision stating the required uses for the land comprised in the lease;
- (b) a provision requiring the lease to be held by a sole lessee;

- (c) a provision stating the restrictions applying to the lease under section 266 (Consent to s 265 dealings) when the lease is granted;

Note Under s 266, a community concessional lease may only be assigned, transferred, sublet, etc to a community organisation that meets certain criteria.

- (d) if the lease includes a building and development provision—a provision stating that the provisions mentioned in paragraphs (e) to (h) commence on the issue of a certificate of compliance stating that the building and development provision has been complied with;
- (e) a provision stating—
- (i) the required uses for which the lessee must use the land comprised in the lease; and
 - (ii) if a required use involves providing a non-continuous service—the minimum requirements for how frequently, and for how long, the service must be provided;

Example—par (e) (ii)

the lessee must provide a place of worship that is open on weekends, and on 3 week days, for at least 8 months per calendar year

- (f) a provision requiring the lessee to give the planning and land authority prescribed information about the use of the land;
- (g) a provision requiring the lessee to give the planning and land authority reports about the use of the land;
- (h) any other provision prescribed by regulation.

253H Community use reports

- (1) This section applies if the lessee of a community concessional lease is required to give the planning and land authority reports about the use of the land comprised in the lease.
 - (2) The lessee must, for each financial year, prepare a report about how the lessee's use of the land has benefitted the broader community during the financial year (a *community use report*).
 - (3) A community use report must—
 - (a) include any matters prescribed by regulation; and
 - (b) be given to the planning and land authority within—
 - (i) 3 months after the end of the financial year; or
 - (ii) any longer period allowed by the authority.
- Note* The planning and land authority may extend the period even if the deadline has passed (see [Legislation Act](#), s 151C).
- (4) The planning and land authority may ask for additional information in relation to a community use report.

253I Audit of community concessional lessee's use of land

- (1) The planning and land authority may require the lessee of a community concessional lease to commission an audit of the lessee's use of the land comprised in the lease.
- (2) The audit must be—
 - (a) paid for by the lessee; and
 - (b) undertaken by—
 - (i) an auditor appointed by the planning and land authority; or
 - (ii) if the authority decides not to appoint an auditor—an auditor that is independent of the lessee; and

- (c) undertaken in accordance with procedures determined by the authority following consultation with the lessee.
- (3) The lessee must make all records relating to the lessee's use of the land available to the auditor for examination within a reasonable time after the auditor asks for the records.
- (4) The planning and land authority must not require a lessee to commission more than 1 audit in any 6-month period.

10 No decision on application unless consideration in public interest
Section 261 (2) (b)

substitute

- (b) whether approving the application would cause any disadvantage to the community, taking into account potential uses of the leased land—
 - (i) mentioned in a statement under section 253D (Statement of future community land for stated districts); or
 - (ii) that are consistent with the [territory plan](#), whether or not those uses are authorised by the lease;

11 New section 261 (2) (f)

before the note, insert

- (f) whether varying the lease to remove its concessional status would be consistent with any statement under section 253D or notification under section 253E (Notification of future community land for grant of community concessional lease by tender) that applies to the lease.

**12 Restrictions on dealings with concessional leases
Section 265 (1), new note**

insert

Note Deal with a lease—see s 234.

13 Section 265 (3) and note

substitute

- (3) However, subsection (2) does not apply to the following:
- (a) if the lease includes a building and development provision—a dealing mentioned in section 298 (1) (Transfer of land subject to building and development provision);
 - (b) in any other case—a dealing—
 - (i) registered under the *Land Titles Act 1925*; or
 - 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).
 - (ii) made under any of the following orders:
 - (A) an order of the Family Court;
 - (B) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);
 - (C) an order under the *Domestic Relationships Act 1994*, division 3.2 (Adjustment of property interests) adjusting the property interests of parties in a domestic relationship; or
 - (iii) that happens by operation of, or under, bankruptcy or insolvency; or
 - (iv) in any circumstances prescribed by regulation.

14 **Consent to s 265 dealings**
Section 266 (1) (a)

substitute

- (a) satisfied that the person to whom it is proposed that the lease 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—
- (i) is a person (an *eligible person*) who could be granted the concessional lease; or
 - (ii) for a dealing with a community concessional lease—
 - (A) is a community organisation; and
 - (B) satisfies the criteria prescribed under section 253F (c) (Grant of community concessional lease by tender); or

Note *Community concessional lease*—see s 253A.

15 **Section 266 (1), new note**

after the examples, insert

Note *Deal* with a lease—see s 234.

16 **Termination of leases**
Section 382 (1) (a)

substitute

- (a) a lessee—
- (i) contravenes this chapter or the lease; or

- (ii) fails to pay a required fee in relation to an extension of time to complete works under section 298D; or
- (iii) receives a compliance reminder notice and fails to comply with the notice; and

17 New section 382 (6)

insert

- (6) In this section:

compliance reminder notice means a notice by the planning and land authority to the lessee of a community concessional lease stating that—

- (a) the lessee must, within 15 days after the day the lessee receives the notice—
 - (i) if the lessee has failed to give the authority a community use report for a financial year—give the authority the community use report; or
 - (ii) if the lessee has failed to give the authority additional information requested under section 253H (4) in relation to a community use report—give the authority the additional information; or
 - (iii) if the lessee has failed to commission an audit as required by the authority under section 253I (1)—commission the audit; and
- (b) if the lessee fails to comply with the notice within the stated time, the lessee's lease may be terminated.

18 **New chapter 26***insert***Chapter 26** **Transitional—Planning and
Development (Community
Concessional Leases)
Amendment Act 2019****510** **Meaning of *commencement day*—ch 26**

In this chapter:

commencement day means the day the *Planning and Development (Community Concessional Leases) Amendment Act 2019*, section 3 commences.

511 **Application by community organisation for direct sale
before 6 December 2017**

- (1) This section applies if—
- (a) before 6 December 2017, a community organisation had applied, in writing, for the grant of a lease by direct sale under section 238 (1) (d) (Granting leases) (a *new lease*); and
 - (b) immediately before the commencement day, the application had not been—
 - (i) withdrawn by the applicant; or
 - (ii) decided by the planning and land authority and either—
 - (A) the lease granted; or
 - (B) the applicant notified that the application was refused.

- (2) This Act, as in force immediately before the commencement day, continues to apply in relation to the application until—
- (a) the application is withdrawn by the applicant; or
 - (b) if the planning and land authority decides to grant the lease—the lease is granted; or
 - (c) if the planning and land authority decides to refuse the application—the later of—
 - (i) the end of the period in which an application for review of the decision can be made; or
 - (ii) an application for review is finalised.

Note A decision under s 238 to refuse to grant a lease by direct sale is a reviewable decision (see ch 13 and sch 1).

- (3) In this section, a reference to an application includes a reference to an application for confirmation of eligibility for the grant of a lease by direct sale.

512 Certain development applications made before the commencement day

- (1) This section applies if—
- (a) before the commencement day, a person had made a development application to which division 9.4.2 (Varying concessional leases to remove concessional status) applies; and
 - (b) immediately before the commencement day, the application had not been—
 - (i) withdrawn by the applicant; or
 - (ii) decided by the planning and land authority.

- (2) Section 261 (No decision on application unless consideration in public interest), as in force immediately before the commencement day, continues to apply in relation to the application until—
- (a) the application is withdrawn by the applicant; or
 - (b) the planning and land authority—
 - (i) approves the application without conditions; or
 - (ii) if the planning and land authority approves the application subject to a condition or refuses the application—the later of—
 - (A) the end of the period in which an application for review of the decision can be made; or
 - (B) an application for review is finalised.

Note A decision under s 162 to approve an application subject to a condition or refuse an application is a reviewable decision (see ch 13 and sch 1).

513 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Planning and Development (Community Concessional Leases) Amendment Act 2019*.
- (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.

514 Expiry—ch 26

This chapter expires 5 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

19 Dictionary, new definitions

insert

community concessional lease—see section 253A.

community concessional lease provisions, for a community concessional lease—see section 253G.

community concessional lease use—see section 253B.

community use report—see section 253H (2).

district—see section 253A.

future community land—see section 253D (2).

potential use, for an area of future community land—see section 253D (3) (a).

required use, for land comprised in a community concessional lease—see section 253A.

Part 3 Planning and Development Regulation 2008

20 Direct sale criteria for community organisations—Act, s 240 (1) (a) (i) Section 112 (1)

omit

direct sale of a lease

substitute

direct sale of a market value lease

21 Section 112 (1), new notes

insert

Note 2 *Market value lease*—see the [Act](#), s 235B.

Note 3 For the grant of a community concessional lease by tender, see pt 5.2A.

22 Direct sale criteria for supportive accommodation—Act, s 240 (1) (a) (i) Section 113 (1)

omit

direct sale of a lease

substitute

direct sale of a market value lease

23 Section 113 (1), new note

insert

Note 2 *Market value lease*—see the [Act](#), s 235B.

24 New part 5.2A*insert***Part 5.2A Community concessional leases—grant by tender***Note* *Community concessional lease*—see the [Act](#), s 253A.**143 Definitions—pt 5.2A**

In this part:

additional use, for a community concessional lease—see section 146 (1) (c).*proposed lease*—see section 144 (2) (a).*threshold criteria*, in relation to a tender for a community concessional lease—see section 145.**144 Tender process—expressions of interest—Act, s 253F (b)**

- (1) Before granting a community concessional lease by tender, the planning and land authority must, by public notice, invite community organisations to submit expressions of interest in the grant of the lease.

Note *Public notice* means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- (2) The planning and land authority must ensure that—
 - (a) a copy of the community concessional lease proposed to be granted (the *proposed lease*) is available on the authority website; and
 - (b) the public notice includes a statement to that effect.

- (3) A community organisation's expression of interest must include a statement addressing the threshold criteria in relation to the tender for the lease.
- (4) If the planning and land authority receives an expression of interest from a community organisation, the authority—
 - (a) must assess whether the community organisation meets the threshold criteria in relation to the tender for the lease; and
 - (b) if the community organisation meets the criteria—may invite the community organisation to tender for the grant of the lease.

145 Grant by tender—threshold criteria—Act, s 253F (c)

The following criteria (*threshold criteria*) are prescribed:

- (a) the person to whom the lease is proposed to be granted is a community organisation;
- (b) the community organisation has financial capacity to—
 - (i) if the lease includes a building and development provision—develop the land comprised in the lease for the lease's required use; and
 - (ii) use the land for the lease's required use;
- (c) the community organisation has the ability (in addition to financial capacity) to—
 - (i) if the lease includes a building and development provision—develop the land comprised in the lease for the lease's required use; and
 - (ii) use the land for the lease's required use;

- (d) the community organisation's constitution or rules are consistent with—
 - (i) if the lease includes a building and development provision—the development of the land comprised in the lease for the lease's required use; and
 - (ii) the lease's required use;
- (e) the community organisation has experience and expertise in—
 - (i) if the lease includes a building and development provision—developing the land comprised in the lease for the lease's required use; and
 - (ii) using the land for the lease's required use;
- (f) if the community organisation proposes to sublease the lease—the sublessee has the ability to comply with the criteria mentioned in paragraphs (a) to (e).

Note 1 Under the [Act](#), s 266 (1) (a) (ii) (B), a person to whom it is proposed that a sublease should be granted must be a community organisation and must satisfy the criteria mentioned in this section.

Note 2 **Community organisation**—see the [Act](#), dictionary.

146 Tender process—content of tenders—Act, s 253F (b)

- (1) If the planning and land authority invites a community organisation to tender for the grant of a community concessional lease, the community organisation's tender must include—
 - (a) the information included in the organisation's expression of interest under section 144; and
 - (b) a statement addressing the additional criteria mentioned in subsection (2); and

- (c) if more than 1 potential use is identified for the land in a statement under the [Act](#), section 253D (Statement of future community land for stated districts)—a proposal to use the land comprised in the proposed lease for another potential use (an *additional use*), in addition to the required use; and
 - (d) a statement addressing the threshold criteria in relation to the additional use; and
 - (e) any additional information requested by the authority.
- (2) The following additional criteria are prescribed:
- (a) the community organisation demonstrates that it needs the land comprised in the lease and the need is consistent with its constitution or rules, taking into account the following:
 - (i) whether the community organisation or a related corporation holds another lease;
 - (ii) if the organisation or corporation holds another lease—whether the land comprised in the other lease is used to its capacity or is otherwise unsuitable for the proposed use;
 - (iii) whether the organisation or corporation has, in the 10 years before the date of the tender, dealt with a lease;
 - (b) the community organisation’s proposed development and use of the land comprised in the lease would not result in a significant underuse of the land;

Note Deal with a lease—see the [Act](#), s 234.

Example

a community organisation is not likely to satisfy the criterion in paragraph (b) if the plans for developing facilities and infrastructure on the land comprised in the lease show that a significant part of the land will not be used

- (c) if the lease includes a building and development provision—the community organisation’s proposed development of the land comprised in the lease will promote the shared use of facilities on the land by other community organisations and the broader community;
 - (d) the community organisation, and any proposed sublessee, will use the land comprised in the lease in a way that is consistent with the additional use of the land proposed by the organisation;
 - (e) any other criteria the planning and land authority considers appropriate to assess the suitability of tenders for the lease.
- (3) In this section:

related corporation, of a community organisation, means a related body corporate under the [Corporations Act](#).

147 Tender process—assessment of tenders—Act, s 253F (b)

- (1) The planning and land authority may accept a tender for a community concessional lease from a community organisation only if the organisation was invited to tender for the lease under section 144 (4) (b).
- (2) If the planning and land authority receives tenders for a community concessional lease, the planning and land authority must assess the suitability of the tenders using—
 - (a) the threshold criteria in section 145; and
 - (b) the additional criteria in section 146 (2).

148 Community concessional lease provisions—Act, s 253G, def *community concessional lease provisions*, par (h)

A provision stating the additional uses for the land comprised in the lease is prescribed.

25 New section 152

in part 5.3, insert

152 Criteria for grant of further community concessional leases—Act, s 254 (1) (f)

The following criteria are prescribed for a further lease of a community concessional lease:

- (a) if the lessee is required to give the planning and land authority community use reports about the use of the land—all required community use reports have been given;
- (b) if the planning and land authority has required the lessee to commission an audit of the lessee's use of the land in the 6 months before the lease expires—the audit has been carried out and the authority is satisfied the community organisation continues to use the lease for a required use stated in the lease.

26 Dictionary, note 3

insert

- community concessional lease (see s 253A)
- community use report (see s 253H (2))
- future community land (see s 253D (2))
- market value lease (see s 235B)
- required use (see s 253A)

27 Dictionary, new definitions

insert

additional use, for a community concessional lease—see section 146 (1) (c).

proposed lease, for part 5.2A (Community concessional leases—grant by tender)—see section 143.

threshold criteria, in relation to a tender for a community concessional lease, for part 5.2A (Community concessional leases—grant by tender)—see section 145.

Schedule 1 Land Titles Act 1925— Consequential amendment

(see s 3)

[1.1] Section 69A, new example

insert

- 4 the effect of the *Planning and Development Act 2007*, s 266 (1) (a) (ii) on the assignment, transfer, subletting etc of a community concessional lease

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 1 August 2019.

2 Notification

Notified under the [Legislation Act](#) on 2 October 2019.

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 and Development (Community Concessional Leases) Amendment Bill 2019, which was passed by the Legislative Assembly on 17 September 2019.

Acting Clerk of the Legislative Assembly

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