

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Land Bill 2002

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2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Land Bill 2002

A Bill for

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

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

1 **Chapter 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Planning and Land Act 2002*.

4 **2 Commencement**

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

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see *Legislation Act 2001*, s 75).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see *Legislation*
11 *Act 2001*, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see *Legislation Act 2001*, s 79).

15 **3 Dictionary**

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

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

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

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

1 **4 Notes**

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

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

5 **5 Object of Act**

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

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

1 **Chapter 2** **The authority and chief**
2 **planning executive**

3 **Part 2.1** **The authority**

4 **6** **Establishment of authority**

5 (1) The Planning and Land Authority is established.

6 (2) The authority—

7 (a) is a body corporate; and

8 (b) must have a seal.

9 (3) The chief planning executive is the authority.

10 **7** **Territory bound by actions of authority**

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

1 **Part 2.2** **Functions of authority**

2 **8 Authority functions**

3 (1) The authority has the following functions:

4 (a) to administer the Territory plan;

5 (b) to continually assess the Territory plan and propose
6 amendments as necessary;

7 (c) to plan and regulate the development of land;

8 (d) to advise on planning and land policy, including the broad
9 spatial planning framework for the ACT;

10 (e) to maintain the digital cadastral database;

11 (f) to make available land information;

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

14 (h) to grant licences over unleased Territory land;

15 (i) to decide applications for approval to undertake development;

16 (j) to regulate the building industry;

17 (k) to make orders under the *Land (Planning and Environment)*
18 *Act 1991*, part 6 (Approvals and orders);

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

21 *Note* The provision of planning services to somebody other than the Territory
22 is subject to s 14 (Provision of planning services to others—ministerial
23 approval).

24 (m) to review its own decisions;

25 (n) to provide administrative support and facilities for the council.

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

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

- 6 (3) The authority must exercise its functions in a way that has regard to
7 sustainable development.

8 *Note* For the meaning of *sustainable development*, see s 73.

- 9 (4) In this section:

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

11 **9 Authority to comply with directions**

12 The authority must comply with—

- 13 (a) any directions given to the authority under this Act or another
14 Territory law; and
15 (b) the statement of planning intent.

16 *Note* The authority may be given directions by the Minister under s 11. The
17 statement of planning intent is dealt with in s 13.

18 **10 Asking council's advice**

- 19 (1) The authority must ask for, and consider, the council's advice—

20 (a) before exercising a function prescribed under the regulations;
21 or

22 (b) before exercising a function in circumstances prescribed under
23 the regulations.

- 24 (2) The authority may ask for the council's advice in relation to the
25 exercise of any other function.

1 **Part 2.3** **Operations of authority**

2 **11 Ministerial directions to authority**

- 3 (1) The Minister may give a written direction to the authority—
- 4 (a) about the general policies the authority must follow; or
- 5 (b) requiring the authority to revise the Territory plan, or a
- 6 provision of the plan.
- 7 (2) Before giving a direction, the Minister must—
- 8 (a) tell the authority about the proposed direction; and
- 9 (b) give the authority reasonable opportunity to comment on the
- 10 proposed direction; and
- 11 (c) consider any comment made by the authority.
- 12 (3) A copy of a direction must be presented to the Legislative Assembly
- 13 within 6 sitting days after the day it is given to the authority.
- 14 (4) If subsection (3) is not complied with, the direction is taken to have
- 15 been revoked at the end of those 6 sitting days.

16 **12 Assembly may recommend directions to authority**

- 17 (1) The Legislative Assembly may, by resolution, recommend that the
- 18 Minister give the authority a stated direction under section 11.
- 19 (2) The Minister must consider the recommended direction and must
- 20 either—
- 21 (a) direct the authority under section 11; or
- 22 (b) tell the Legislative Assembly that the Minister does not
- 23 propose to direct the authority as recommended.

Section 13

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

4 **13 Statement of planning intent**

- 5 (1) The Minister may give the authority a written statement that sets out
6 the main principles that are to govern planning and land
7 development in the ACT (the *statement of planning intent*).
- 8 (2) The Minister must present a copy of a statement of planning intent
9 to the Legislative Assembly within 6 sitting days after the day the
10 statement is given to the authority.

11 **14 Provision of planning services to others—ministerial**
12 **approval**

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

15 **15 Reports by authority to Minister**

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

22 **16 Authority's annual report**

23 The report presented, or information given, by the authority under
24 the *Annual Reports (Government Agencies) Act 1995*, section 8
25 (Annual reports of public authorities) must include, for the reporting
26 period to which the report or information relates—

- 27 (a) a copy of any direction given under section 11 (Ministerial
28 directions to authority); and

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

4 **17 Delegations by authority**

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

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

1 **Part 2.4 The chief planning executive**

2 **18 Appointment of chief planning executive**

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

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

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

10 (2) An appointment must be for a term of not longer than 5 years.

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

13 (3) An appointment is a notifiable instrument.

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

15 **19 Chief planning executive's employment conditions**

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

20 **20 Functions of chief planning executive**

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

- 1 **21 Suspension or ending of chief planning executive's**
2 **appointment**
- 3 (1) The Executive may suspend the chief planning executive from
4 duty—
- 5 (a) for misbehaviour; or
- 6 (b) for physical or mental incapacity, if the incapacity affects the
7 exercise of the chief planning executive's functions; or
- 8 (c) if the chief planning executive is convicted, in Australia or
9 elsewhere, of an offence punishable by imprisonment for at
10 least 1 year.
- 11 (2) The Minister must present to the Legislative Assembly a statement
12 of the reasons for the suspension on the first sitting day after the day
13 the chief planning executive is suspended.
- 14 (3) If, within 7 sitting days after the day the statement is presented, the
15 Legislative Assembly resolves to require the Executive to end the
16 chief planning executive's appointment, the Executive must end the
17 chief planning executive's appointment.
- 18 (4) The chief planning executive's suspension ends—
- 19 (a) if the Minister does not comply with subsection (2)—at the end
20 of the day the Minister should have presented to the Legislative
21 Assembly the statement mentioned in that subsection; or
- 22 (b) if the Assembly does not pass a resolution mentioned in
23 subsection (3) within the 7 sitting days—at the end of the
24 7th sitting day.
- 25 (5) The chief planning executive is entitled to be paid salary and
26 allowances while suspended.
- 27 *Note* An appointment also ends if the appointee resigns (see *Legislation Act*
28 *2001*, s 210).

1 **Part 2.5** **Authority staff and**
2 **consultants**

3 **22** **Authority staff**

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

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

12 **23** **Authority consultants**

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

1 **Chapter 3 The council**

2 **Part 3.1 Establishment, constitution**
3 **and functions**

4 **24 Establishment of council**

5 The Planning and Land Council is established.

6 **25 Constitution of council**

7 (1) The council consists of—

8 (a) a chairperson; and

9 (b) a deputy chairperson; and

10 (c) at least 3, and not more than 5, other members.

11 (2) The following must not be appointed under subsection (1):

12 (a) the chief planning executive;

13 (b) a member of the authority staff;

14 (c) the chief executive officer.

15 (3) The council deputy chairperson acts in the position of council
16 chairperson—

17 (a) during all vacancies in the position; and

18 (b) during all periods when the council chairperson cannot for any
19 reason exercise the functions of the position.

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

1 **26 Functions of council**

2 (1) The council must give advice on matters arising under this Act if
3 asked by the Minister or the authority.

4 (2) The council may exercise any other function given to the council
5 under this Act or another Territory law.

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

1 **Part 3.2 Council membership**

2 **27 Council members**

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

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

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

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

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

- 13 (a) urban economics;
14 (b) community and social planning;
15 (c) urban and regional planning;
16 (d) environmental management;
17 (e) land development;
18 (f) public policy or public law;
19 (g) urban design;
20 (h) transport planning;
21 (i) public administration.

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

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

1 **28 Ending of council members' appointments**

2 The Minister may end the appointment of a council member—

- 3 (a) for misbehaviour; or
- 4 (b) physical or mental incapacity, if the incapacity affects the
- 5 exercise of the member's functions; or
- 6 (c) if the member—
- 7 (i) becomes bankrupt, applies to take the benefit of a law for
- 8 the relief of bankrupt or insolvent debtors, compounds
- 9 with his or her creditors or makes an assignment of
- 10 remuneration for their benefit; or
- 11 (ii) is absent, other than on leave approved by the Minister,
- 12 from 3 consecutive meetings of the council; or
- 13 (iii) contravenes section 35 (Disclosure of interests by council
- 14 members) without reasonable excuse; or
- 15 (iv) commits, in Australia or elsewhere, an offence
- 16 punishable by imprisonment for at least 1 year; or
- 17 (d) if the Minister is satisfied that the member's ability to function
- 18 as a council member is affected by an interest disclosed under
- 19 section 35.

20 *Note* The appointment of a member also ends if the member resigns (see

21 *Legislation Act 2001*, s 210).

22 **29 Calling council meetings**

- 23 (1) The council is to meet at the times and places the council
- 24 chairperson decides.
- 25 (2) The council chairperson must ensure that council members have
- 26 reasonable notice of meetings.
- 27 (3) The council chairperson must ensure that, as far as practicable, the
- 28 council meets at least monthly.

1 **30 Council meetings**

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

11 **31 Council resolutions**

- 12 A resolution is a valid resolution of the council, even if it was not
13 passed at a meeting of the council, if—
- 14 (a) notice of the resolution is given under procedures decided by
15 the council; and
- 16 (b) all council members agree, in writing, to the proposed
17 resolution.

18 **32 Minimum number for council meetings**

19 Business may be carried on at a council meeting only if at least
20 4 council members are present.

21 **33 Voting at council meetings**

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

1 **34 Minutes of council proceedings**

- 2 (1) The council must keep minutes of its proceedings.
- 3 (2) At a council meeting the council chairperson must ensure that the
4 council considers the minutes of its last meeting.

5 **35 Disclosure of interests by council members**

- 6 (1) A council member who has a relevant interest in an issue being
7 considered, or about to be considered, by the council must, as soon
8 as practicable after the relevant facts have come to the council
9 member's knowledge, disclose the nature of the interest at a meeting
10 of the council.
- 11 (2) The disclosure must be recorded in the council's minutes and, unless
12 the council otherwise decides, the council member must not—
- 13 (a) be present when the council considers the issue; or
- 14 (b) take part in a decision of the council on the issue.
- 15 (3) Any other council member who also has a relevant interest in the
16 issue must not—
- 17 (a) be present when the council is considering its decision under
18 subsection (2); or
- 19 (b) take part in the decision.
- 20 (4) In this section:
- 21 *relevant interest*, in an issue, means—
- 22 (a) a direct or indirect financial interest in the issue; or
- 23 (b) a direct or indirect interest of any other kind if the interest
24 could conflict with the proper exercise of the council member's
25 functions in relation to the council's consideration of the issue.

1 **36 Reporting of disclosed interests to Minister**

2 (1) Within 10 days after the disclosure of an interest under
3 section 35 (1), the council chairperson must report to the Minister in
4 writing about—

5 (a) the disclosure; and

6 (b) the nature of the interest disclosed; and

7 (c) any decision by the council under section 35 (2).

8 (2) The council chairperson must give to the Minister, by 31 July in
9 each year, a statement that sets out the information given to the
10 Minister in reports under subsection (1) that relate to disclosures
11 made during the previous financial year.

12 (3) The Minister must give a copy of the statement to the relevant
13 committee of the Legislative Assembly within 14 days after the day
14 the Minister receives the statement.

15 (4) In this section:

16 *relevant committee* means—

17 (a) a standing committee of the Legislative Assembly nominated
18 by the Speaker for subsection (3); or

19 (b) if no nomination under paragraph (a) is in effect—the standing
20 committee of the Legislative Assembly responsible for public
21 accounts.

1 **Chapter 4** **The land agency**

2 **Part 4.1** **Establishment and functions**
3 **of land agency**

4 **37** **Establishment of land agency**

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

6 (2) The land agency—

7 (a) is a corporation; and

8 (b) must have a seal.

9 **38** **Functions of land agency**

10 (1) The land agency has the following functions:

11 (a) to develop land;

12 (b) to carry out works for the development and enhancement of
13 land;

14 (c) to carry out strategic or complex urban development projects.

15 (2) The land agency may exercise any other function given to the land
16 agency under this Act or another Territory law.

17 (3) The land agency may exercise its functions—

18 (a) alone; or

19 (b) through subsidiaries, joint ventures or trusts; or

20 (c) by holding shares in, or other securities of, corporations.

- 1 (4) The land agency must exercise its functions—
2 (a) in accordance with the urban management objectives set out in
3 the Territory plan; and
4 (b) in accordance with sound business practice; and
5 (c) if a business plan has been accepted by the Minister—so as to
6 give effect to the latest plan accepted by the Minister.

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

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

11 **39 Land agency functions to be exercised in accordance**
12 **with directions**

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

15 *Note* The land agency may be given directions under s 51.

16 **40 Limitations on land agency's formation of corporations**

- 17 (1) The land agency must not do any of the following without the
18 Executive's prior written approval:
19 (a) subscribing for, or purchasing shares in, or debentures or other
20 securities of, a corporation;
21 (b) forming, or taking part in the formation of, a corporation.
22 (2) An approval under subsection (1)—
23 (a) must relate only to a particular corporation or proposed
24 corporation; and
25 (b) may be given subject to the conditions or restrictions stated in
26 the approval.

Section 41

- 1 (3) If the land agency does something mentioned in subsection (1), the
2 land agency must promptly tell the Minister about it.
- 3 (4) The Minister must—
- 4 (a) prepare a written statement setting out details of, and reasons
5 for, the land agency's action; and
- 6 (b) present the statement to the Legislative Assembly within
7 6 sitting days after the day the Minister is told of the act.
- 8 (5) A statement need not include any material that is commercially
9 sensitive.
- 10 (6) However, if commercially sensitive information is not included in
11 the statement, the Minister must, when presenting the statement,
12 also present to the Legislative Assembly a further statement setting
13 out the general nature of the information and the reason for its
14 non-inclusion in the statement.

15 **41 Limitations on land agency's participation in joint**
16 **ventures and trusts**

- 17 (1) The land agency must not take part in a joint venture or trust without
18 the Executive's prior written approval.
- 19 (2) An approval under subsection (1)—
- 20 (a) may apply generally or may relate to a particular proposed
21 joint venture or trust; and
- 22 (b) may be given subject to the conditions or restrictions stated in
23 the approval.
- 24 (3) If the land agency enters into an agreement for a joint venture or
25 trust, the land agency must promptly tell the Minister about the
26 agreement.

- 1 (4) The Minister must—
- 2 (a) prepare a written statement setting out details of, and reasons
- 3 for, the agreement; and
- 4 (b) present the statement to the Legislative Assembly within
- 5 6 sitting days after the day the Minister is told about the
- 6 agreement under subsection (3).
- 7 (5) A statement need not include any material that is commercially
- 8 sensitive.
- 9 (6) However, if commercially sensitive information is not included in
- 10 the statement, the Minister must, when presenting the statement,
- 11 also present to the Legislative Assembly a further statement setting
- 12 out the general nature of the information and the reason for its
- 13 non-inclusion in the statement.

14 **42 Corporations, joint ventures and trusts in which land**

15 **agency has an interest**

- 16 (1) If the land agency has a controlling interest in a corporation, joint
- 17 venture or trust, the agency must ensure that—
- 18 (a) the auditor-general is appointed auditor for the corporation,
- 19 joint venture or trust; and
- 20 (b) the corporation or joint venture, or a trustee for the trust, does
- 21 not do anything that the agency itself may not do.
- 22 (2) If the land agency has an interest, other than a controlling interest, in
- 23 a corporation, joint venture or trust, the land agency must try to
- 24 ensure that the auditor-general is appointed auditor for the
- 25 corporation, joint venture or trust.

26 *Note* The *Auditor-General Act 1996*, s 14 (Power to obtain information)

27 enables the auditor-general to direct a person, in connection with the

28 auditor-general's functions, to give to the auditor-general information

29 and documents.

Chapter 4 The land agency
Part 4.1 Establishment and functions of land agency

Section 42

- 1 (3) In this section—
2 *controlling interest*—see the *Auditor-General Act 1996*, section 5.

1 **Part 4.2** **Management of land agency**

2 **Division 4.2.1** **Introductory concepts**

3 **43** **Meaning of *business plan* for pt 4.2**

4 For this part, a *business plan* is a document that complies with
5 section 44.

6 **Division 4.2.2** **Land agency business plans**

7 **44** **Contents of land agency business plans**

8 (1) A land agency business plan for a financial year must contain—

9 (a) a copy of the statement of intent; and

10 (b) a description of the major undertakings that the land agency is
11 likely to be involved in during the financial year and the next
12 2 financial years; and

13 (c) a description of the land agency's business strategies, and
14 proposed business strategies, for the financial year and the next
15 2 financial years; and

16 (d) any other information or material that—

17 (i) the Minister has asked the land agency, in writing, to
18 include in the business plan; or

19 (ii) is prescribed under the regulations.

20 (2) For this section:

21 *statement of intent*, for a financial year, means the statement of
22 intent for the year provided under the *Financial Management Act*
23 *1996*, section 58 (Statements of intent).

1 **45 Preparation, acceptance and presentation of business**
2 **plans**

- 3 (1) The regulations may prescribe how, and when, a business plan—
4 (a) is developed or varied; and
5 (b) is accepted by the Minister.
- 6 (2) A business plan accepted by the Minister must be presented to the
7 Legislative Assembly within 5 sitting days after the day of
8 acceptance.

9 **Division 4.2.3 Land agency financial provisions**

10 **46 Proceeds of lease sale**

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

13 **47 Payment of funds to Territory**

- 14 (1) The Treasurer may, in writing, direct the land agency to pay to the
15 Territory—
16 (a) the amount stated in the direction; or
17 (b) an amount calculated in the way stated in the direction.
- 18 (2) The Treasurer may also direct the land agency, in a direction under
19 subsection (1) or another instrument, about—
20 (a) how payment is to be made; and
21 (b) when payment is to be made; and
22 (c) the conditions relating to payment.
- 23 (3) In giving a direction under subsection (1), the Treasurer must have
24 regard to—
25 (a) the land agency's assets and liabilities; and

- 1 (b) the land agency's income and expenditure; and
2 (c) the land agency's ability to exercise its functions; and
3 (d) the requirement that the Territory obtain a reasonable return
4 from the development and disposal of land.

5 **48 Liability for Territory taxes**

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

8 **49 Guarantees by land agency**

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

14 **Division 4.2.4 General**

15 **50 Land agency to give information to Ministers**

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

24 *Note* For the acceptance of a business plan by the Minister, see s 45
25 (Preparation, acceptance and presentation of business plans).

1 (b) the financial viability or operating ability of the land agency or
2 a corporation, joint venture or trust in which the land agency
3 has an interest.

4 (3) For this section:

5 *statement of intent*—see section 44 (Contents of land agency
6 business plans).

7 **51 Ministerial directions to land agency**

8 (1) The Minister may give written directions to the land agency—

9 (a) about the general policies the land agency should follow; or

10 (b) the principles that are to govern the exercise of its functions.

11 (2) Before giving a direction, the Minister must—

12 (a) tell the land agency about the proposed direction; and

13 (b) give the land agency reasonable opportunity to comment on the
14 proposed direction; and

15 (c) consider any comments made by the land agency.

16 (3) A direction is a notifiable instrument.

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

18 (4) A direction must be notified under the *Legislation Act 2001* within
19 14 days after the day it is made.

20 (5) If subsection (4) is not complied with, the direction is taken to have
21 been revoked at the end of the 14 days.

1 **52 Territory to compensate land agency for cost of**
2 **complying with directions**

3 (1) The Territory must pay to the land agency the reasonable net cost of
4 complying with a direction under section 51.

5 (2) The amount payable under subsection (1) is the amount agreed
6 between the land agency and the Treasurer or, failing agreement, the
7 amount decided by the Chief Minister.

8 **53 Committees**

9 (1) The land agency board—

10 (a) must establish an audit committee; and

11 (b) may establish any other committee; and

12 (c) may appoint land agency board members and other people to
13 committees.

14 (2) However, the chief executive officer must not be appointed a
15 member of the audit committee.

16 (3) Also, the chairperson of the audit committee must be a land agency
17 board member.

18 (4) The procedures of a committee are decided by the land agency
19 board or, if there is no relevant decision of the board, by the
20 committee.

21 **54 Land agency's annual report**

22 The report presented, or information given, by the land agency
23 under the *Annual Reports (Government Agencies) Act 1995*,
24 section 8 must include, for the reporting period to which the report
25 or information relates—

26 (a) a copy of any direction given under section 51 (Ministerial
27 directions to land agency) during the period; and

1 (b) a statement by the land agency about action taken during the
2 period to give effect to any direction given (whether before or
3 during the period) under that section.

4 **55 Delegation by land agency**

5 The land agency may delegate its functions, including functions
6 delegated to it by the authority, to the chief executive officer.

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

1 **Part 4.3** **Membership of land agency**
2 **and its board**
3

4 **56 Constitution of land agency**

5 The land agency consists of the land agency board.

6 **57 Land agency board**

7 (1) The land agency board consists of—

- 8 (a) a chairperson; and
9 (b) a deputy chairperson; and
10 (c) at least 3, and not more than 5, other members.

11 (2) The following must not be appointed under subsection (1):

- 12 (a) the chief planning executive;
13 (b) a member of the authority staff;
14 (c) the chief executive officer.

15 (3) The land agency deputy chairperson acts in the position of land
16 agency chairperson—

- 17 (a) during all vacancies in the position; and
18 (b) during all periods when the land agency chairperson cannot for
19 any reason exercise the functions of the position.

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

1 **58 Appointment of land agency board members**

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

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

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

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

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

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

15 (a) land development;

16 (b) economics;

17 (c) public law;

18 (d) finance or accounting;

19 (e) public administration.

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

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

24 **59 Honesty, care and diligence of land agency board**
25 **members**

26 In exercising the functions of land agency board member, a land
27 agency board member must exercise the degree of honesty, care and
28 diligence required to be exercised by a director of a corporation in
29 relation to the affairs of the corporation.

- 1 **60 Ending of land agency board members' appointments**
- 2 The Minister may end the appointment of a land agency board
- 3 member—
- 4 (a) for misbehaviour; or
- 5 (b) physical or mental incapacity, if the incapacity affects the
- 6 exercise of the member's functions; or
- 7 (c) if the member—
- 8 (i) becomes bankrupt, applies to take the benefit of a law for
- 9 the relief of bankrupt or insolvent debtors, compounds
- 10 with his or her creditors or makes an assignment of
- 11 remuneration for their benefit; or
- 12 (ii) is absent, other than on leave approved by the Minister,
- 13 from 3 consecutive meetings of the land agency board; or
- 14 (iii) contravenes section 59 or section 67 (Disclosure of
- 15 interests by land agency board members); or
- 16 (iv) is convicted, in Australia or elsewhere, of an offence
- 17 punishable by imprisonment for at least 1 year; or
- 18 (d) if the Minister is satisfied that the member's ability to exercise
- 19 functions as a land agency board member is affected by an
- 20 interest disclosed under section 67.
- 21 *Note* An appointment also ends if the appointee resigns (see *Legislation Act*
- 22 *2001*, s 210).

1 **Part 4.4 Meetings of land agency board**

2 **61 Calling land agency board meetings**

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

9 **62 Procedure at land agency board meetings**

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

22 **63 Land agency board resolutions**

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

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

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

2 **64 Minimum number for land agency board meetings**

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

5 **65 Voting at land agency board meetings**

6 (1) Questions arising at a land agency board meeting may be decided by
7 a majority of the votes of the land agency board members present
8 and voting.

9 (2) If the votes of land agency board members on a question are equally
10 divided, the decision of the chairperson is the decision of the land
11 agency board on the question.

12 **66 Minutes of land agency board proceedings**

13 (1) The land agency must keep minutes of its proceedings.

14 (2) At a land agency board meeting the land agency chairperson must
15 ensure that the land agency board considers the minutes of its last
16 meeting.

17 **67 Disclosure of interests by land agency board members**

18 (1) A land agency board member who has a relevant interest in an issue
19 being considered, or about to be considered, by the land agency
20 must, as soon as practicable after the relevant facts have come to the
21 member's knowledge, disclose the nature of the interest at a meeting
22 of the land agency.

23 (2) The disclosure must be recorded in the land agency board's minutes
24 and, unless the land agency board otherwise decides, the land
25 agency board member must not—

26 (a) be present when the land agency considers the issue; or

27 (b) take part in a decision of the land agency on the issue.

Section 68

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

13 **68 Reporting of disclosed interests to Minister**

- 14 (1) Within 10 days after the disclosure of an interest under
15 section 67 (1), the land agency chairperson must report to the
16 Minister in writing about—
- 17 (a) the disclosure; and
- 18 (b) the nature of the interest disclosed; and
- 19 (c) any decision by the land agency board under section 67 (2).
- 20 (2) The land agency chairperson must give to the Minister, by 31 July in
21 each year, a statement that sets out the information given to the
22 Minister in reports under subsection (1) that relate to disclosures
23 made during the previous financial year.
- 24 (3) The Minister must give a copy of the statement to the relevant
25 committee of the Legislative Assembly within 14 days after the day
26 the Minister receives the statement.

1 (4) In this section:

2 *relevant committee* means—

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

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

3 **Division 4.5.1** **Land agency chief executive**
4 **officer**

5 **69** **Appointment of chief executive officer**

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

8 *Note* For the making of appointments (including acting appointments), see
9 *Legislation Act 2001*, div 18.3.

10 (2) The chief executive officer's conditions of appointment are the
11 conditions agreed between the land agency and the chief executive
12 officer, subject to any determination under the *Remuneration*
13 *Tribunal Act 1995*.

14 (3) The land agency may enter into an agreement mentioned in
15 subsection (2) only after consulting the Minister.

16 (4) The land agency may end the chief executive's appointment only
17 after consulting the Minister.

18 **70** **Functions of chief executive officer**

19 (1) The chief executive officer must manage the land agency's affairs
20 on behalf of the land agency.

21 (2) The chief executive officer also has any other function given to
22 chief executive officer by the land agency board.

23 (3) The chief executive officer must exercise the chief executive
24 officer's functions in accordance with any direction given by the
25 land agency board.

1 **Division 4.5.2 Land agency staff and consultants**

2 **71 Land agency staff**

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

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

11 **72 Land agency consultants**

12 (1) The land agency may engage consultants.

13 (2) However, the land agency must not enter into a contract of
14 employment under this section.

1 **Chapter 5 Miscellaneous**
2
3

4 **73 Meaning of *sustainable development***

5 For this Act:

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

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

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

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

22 **74 Abuse of position**

- 23 (1) An official must not, dishonestly and with improper intention—
24 (a) exercise a function or an influence that the official has because
25 of the official's position; or
26 (b) fail to exercise a function that the official has because of the
27 official's position; or

- 1 (c) use information gained because of the official's position.
- 2 Maximum penalty: imprisonment for 5 years.
- 3 (2) For subsection (1), an official has an improper intention if the
4 official intends—
- 5 (a) to obtain a benefit for the official or somebody else; or
- 6 (b) to cause a detriment to somebody else.
- 7 (3) In this section:
- 8 *official* means—
- 9 (a) the chief planning executive; or
- 10 (b) a council member; or
- 11 (c) a land agency board member.
- 12 *position*, in relation to an official, means the position held by the
13 official under this Act.
- 14 **75 Review of Act**
- 15 (1) The Minister must review the operation and effectiveness of this Act
16 as soon as practicable after 31 December 2007.
- 17 (2) The Minister must ensure that, during the review, regard is had to—
- 18 (a) the effectiveness of the operations of the entities established by
19 this Act; and
- 20 (b) the need for the continuation of the existence of each entity;
21 and
- 22 (c) the need for the continuation of this Act.
- 23 (3) The Minister must also consider anything else that seems to the
24 Minister to be relevant to the operation and effectiveness of this Act.

1 (4) The Minister must prepare a report based on the review and must, as
2 soon as practicable, present a copy to the Legislative Assembly.

3 (5) This section expires on 31 December 2008.

4 **76 Regulation-making power**

5 The Executive may make regulations for this Act.

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

Dictionary

(see s 3)

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

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

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

authority means the Planning and Land Authority established under section 6 (1).

business plan, for part 4.2 (Management of land agency)—see section 43 (Meaning of *business plan* for pt 4.2).

chief executive officer, for the land agency, means the person appointed under section 69.

chief planning executive—see section 18 (Appointment of chief planning executive).

council means the Planning and Land Council established under section 24 (Establishment of council).

council chairperson means the council member mentioned in section 25 (1) (a).

council deputy chairperson means the council member mentioned in section 25 (1) (b).

council member means a person mentioned in section 25 (1) (Constitution of council).

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

- 1 ***joint venture*** includes partnership and arrangement for sharing
2 profit.
- 3 ***land agency***—see section 37 (1).
- 4 ***land agency board*** means the board mentioned in section 57.
- 5 ***land agency board member*** means a person mentioned in
6 section 57 (1).
- 7 ***land agency chairperson*** means the person mentioned in
8 section 57 (1) (a).
- 9 ***land agency deputy chairperson*** means the person mentioned in
10 section 57 (1) (b).
- 11 ***statement of planning intent***—see section 13 (Statement of
12 planning intent).
- 13 ***sustainable development***—see section 73 (Meaning of ***sustainable***
14 ***development***).
- 15 ***tax*** includes duty, fee or charge.