

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Development Bill 2006

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2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Development Bill 2006

A Bill for

An Act about planning and development in the ACT

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 Development Act 2006*.

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, s 75 (1)).

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

20 For example, the signpost definition '*conservation requirement*—see
21 the *Heritage Act 2004*, dictionary.' means that the term 'conservation
22 requirement' is defined in that dictionary and the definition applies to
23 this Act.

24 *Note 2* A definition in the dictionary (including a signpost definition) applies to
25 the entire Act unless the definition, or another provision of the Act,
26 provides otherwise or the contrary intention otherwise appears (see
27 Legislation Act, 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 the Legislation Act, s 127 (1), (4) and (5) for the legal status of
4 notes.

5 **5** **Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1* *Criminal Code*

8 The Criminal Code, ch 2 applies to all offences against this Act (see
9 Code, pt 2.1).

10 The chapter sets out the general principles of criminal responsibility
11 (including burdens of proof and general defences), and defines terms
12 used for offences to which the Code applies (eg *conduct*, *intention*,
13 *recklessness* and *strict liability*).

14 *Note 2* *Penalty units*

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

1 **Chapter 2 Object and important concepts**

2 **6 Object of Act**

3 The object of this Act is to provide a planning and land system that
4 contributes to the orderly and sustainable development of the
5 ACT—

- 6 (a) consistent with the social, environmental and economic
7 aspirations of the people of the ACT; and
8 (b) in accordance with sound financial principles.

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

14 **7 Meaning of *development***

15 In this Act:

16 ***development***, in relation to land, means the following:

- 17 (a) building, altering or demolishing a building or structure on the
18 land;
19 (b) carrying out earthworks or other construction work on or under
20 the land;
21 (c) carrying out work that would affect the landscape of the land;
22 (d) using the land, or a building or structure on the land;
23 (e) beginning a new use of the land, or a building or structure on
24 the land;

- 1 (f) changing a use of the land, or a building or structure on the
2 land, whether by adding a use or stopping a use and
3 substituting another use;
- 4 *Note* Development approval is not required for continuing use lawfully
5 commenced (see s 195 and s 198).
- 6 (g) subdividing or consolidating land (whether by lease variation
7 or otherwise);
- 8 (h) varying a lease relating to the land (including varying by
9 surrender of the lease and grant of a new lease in different
10 terms);
- 11 (i) varying a lease granted as a concessional lease by surrender
12 and regrant of the lease as a market value lease;
- 13 (j) putting up, attaching or displaying a sign or advertising
14 material otherwise than in accordance with a licence issued
15 under this Act or permit under the *Roads and Public Places*
16 *Act 1937*.

17 **8 Meaning of *sustainable development***

18 For this Act:

19 *sustainable development* means the effective integration of social,
20 economic and environmental considerations in decision-making
21 processes, achievable through implementation of the following
22 principles:

- 23 (a) the precautionary principle;
- 24 (b) the inter-generational equity principle;
- 25 (c) conservation of biological diversity and ecological integrity;
- 26 (d) appropriate valuation and pricing of environmental resources.

1 ***the inter-generational equity principle*** means that the present
2 generation should ensure that the health, diversity and productivity
3 of the environment is maintained or enhanced for the benefit of
4 future generations.

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

1 **Chapter 3** **The planning and land**
2 **authority and chief planning**
3 **executive**

4 **Part 3.1** **The planning and land authority**

5 **9** **Establishment of authority**

- 6 (1) The Planning and Land Authority is established.
- 7 (2) The planning and land authority—
- 8 (a) is a body corporate; and
- 9 (b) must have a seal.
- 10 (3) The chief planning executive is the planning and land authority.

11 **10** **Territory bound by actions of authority**

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

1 **Part 3.2** **Functions of planning and land**
2 **authority**

3 **11 Authority functions**

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

- 5 (a) to prepare and administer the territory plan;
- 6 (b) to continually review the territory plan and propose
7 amendments as necessary;
- 8 (c) to plan and regulate the development of land;
- 9 (d) to advise on planning and land policy, including the broad
10 spatial planning framework for the ACT;
- 11 (e) to maintain the digital cadastral database under the *Districts*
12 *Act 2002*;
- 13 (f) to make available land information;
- 14 (g) to grant, administer, vary and end leases on behalf of the
15 Executive;
- 16 *Note* Under s 230 the planning and land authority is authorised to
17 grant, on behalf of the Executive, leases the Executive may grant
18 on behalf of the Commonwealth.
- 19 (h) to grant licences over unleased territory land;
- 20 (i) to decide applications for approval to undertake development;
- 21 (j) to regulate the building industry;
- 22 (k) to make controlled activity orders under part 11.3 (Controlled
23 activity orders) and take other compliance and enforcement
24 action under this Act and other territory laws;

- 1 (l) to provide planning services, including services to entities
2 outside the ACT;
- 3 *Note* The planning and land authority may only provide planning
4 services to somebody other than the Territory with the Minister's
5 approval (see s 16).
- 6 (m) to review its own decisions;
- 7 (n) to provide opportunities for community consultation about, and
8 participation in, planning decisions;
- 9 (o) to promote public education and understanding of the planning
10 process, including by providing easily accessible public
11 information and documentation on planning and land use.
- 12 (2) The planning and land authority may exercise any other function
13 given to the authority under this Act, another territory law or a
14 Commonwealth law.
- 15 *Note* A provision of a law that gives an entity (including a person) a function
16 also gives the entity powers necessary and convenient to exercise the
17 function (see Legislation Act, s 196 and dict, pt 1, def *entity*).
- 18 (3) The planning and land authority must exercise its functions—
- 19 (a) in a way that, as far as practicable, gives effect to sustainable
20 development; and
- 21 (b) taking into consideration the statement of planning intent.
- 22 *Note 1* For the meaning of *sustainable development*, see s 8. The statement of
23 planning intent is dealt with in s 15.
- 24 *Note 2* The planning and land authority must not do anything inconsistent with
25 the territory plan (see s 49) or the national capital plan (see *Australian*
26 *Capital Territory (Planning and Land Management) Act 1988* (Cwlth),
27 s 11).

1 **12 Authority to comply with directions**

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

4 *Note* The Minister may give the planning and land authority directions under
5 s 13, s 61, s 75, s 97, s 99, s 154, s 238 (2) and s 316.

1 **Part 3.3** **Operations of planning and land**
2 **authority**

3 **13 Ministerial directions to authority**

- 4 (1) The Minister may give a written direction to the planning and land
5 authority—
6 (a) about the general policies the authority must follow; or
7 (b) requiring the authority to revise the territory plan, or a
8 provision of the plan, or review the plan.
9 (2) Before giving a direction the Minister must—
10 (a) tell the planning and land authority about the proposed
11 direction; and
12 (b) give the authority a reasonable opportunity to comment on the
13 proposed direction; and
14 (c) consider any comment made by the authority.
15 (3) The Minister must—
16 (a) present a copy of a direction to the Legislative Assembly not
17 later than 6 sitting days after the day it is given to the planning
18 and land authority; and
19 (b) if the copy would not be presented to the Legislative Assembly
20 before the end of the period of 10 working days after the day
21 the direction is given to the authority—give a copy to the
22 members of the Assembly before the end of the 10-day period.

Section 14

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

6 (5) A direction is a notifiable instrument.

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

8 **14 Assembly may recommend directions to authority**

9 (1) The Legislative Assembly may, by resolution, recommend that the
10 Minister give the planning and land authority a stated direction
11 under section 13.

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

14 (a) direct the planning and land authority under section 13; or

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

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

21 **15 Statement of planning intent**

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

- 1 (2) The Minister must—
- 2 (a) present a copy of the statement of planning intent to the
- 3 Legislative Assembly not later than 6 sitting days after the day
- 4 it is given to the planning and land authority; and
- 5 (b) if the copy would not be presented to the Legislative Assembly
- 6 before the end of the period of 10 working days after the day
- 7 the statement is given to the authority—give a copy to the
- 8 members of the Assembly before the end of the 10-day period.
- 9 (3) To remove any doubt, the statement of planning intent does not
- 10 authorise a person to whom section 49 (Effect of territory plan)
- 11 applies to do anything inconsistent with the territory plan.

12 **Example**

13 The statement of planning intent may include policy material inconsistent with the

14 territory plan, but the plan would have to be amended before the policy could be

15 implemented.

16 *Note* An example is part of the Act, is not exhaustive and may extend, but

17 does not limit, the meaning of the provision in which it appears (see

18 Legislation Act, s 126 and s 132).

19 **16 Provision of planning services to others—ministerial**

20 **approval**

21 The planning and land authority may provide planning services to

22 somebody other than the Territory only with the Minister's written

23 approval.

24 **17 Reports by authority to Minister**

- 25 (1) The planning and land authority must give the Minister a report, or
- 26 information about its operations, required by the Minister.
- 27 (2) A report under this section must be prepared in the form (if any) that
- 28 the Minister requires.

- 1 (3) This section is in addition to any other provision about the giving of
2 reports or information by the planning and land authority.

3 **18 Authority's annual report**

4 A report prepared by the planning and land authority under the
5 *Annual Reports (Government Agencies) Act 2004* for a financial
6 year must include—

- 7 (a) a copy of any direction given to the authority under this Act or
8 another territory law during the year; and
9 (b) a statement by the authority about action taken during the year
10 to give effect to any direction given (whether before or during
11 the year).

12 *Note* **Financial year** has an extended meaning in the *Annual Reports*
13 *(Government Agencies) Act 2004*, s 6.

14 **19 Delegations by authority**

- 15 (1) The planning and land authority may delegate—
16 (a) the authority's functions under this Act or another territory law
17 to a public servant who is an authority staff member; and
18 (b) the authority's functions under part 9.11 (Licences for unleased
19 land) in relation to an area of land to the custodian of the land.
20 (2) The planning and land authority may also delegate the function of
21 granting leases on behalf of the Executive to the land agency.

22 *Note* For the making of delegations and the exercise of delegated functions,
23 see the Legislation Act, pt 19.4.

1 **Part 3.4** **The chief planning executive**

2 **20** **Appointment of chief planning executive**

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

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

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

- 9 (2) However, the Executive must not appoint a person under
10 subsection (1) unless satisfied that the person has the management
11 and planning experience or expertise to exercise the functions of the
12 chief planning executive.

- 13 (3) An appointment must be for a term of not longer than 5 years.

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

- 16 (4) An appointment is a notifiable instrument.

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

18 **21** **Chief planning executive's employment conditions**

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

23 **22** **Functions of chief planning executive**

24 The chief planning executive may exercise the functions given to
25 the chief planning executive under this Act or another territory law.

- 1 **23** **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, or found guilty, in
9 Australia of an offence punishable by imprisonment for at least
10 1 year; or
- 11 (d) if the chief planning executive is convicted, or found guilty,
12 outside Australia of an offence that, if it had been committed in
13 the ACT, would be punishable by imprisonment for at least
14 1 year.
- 15 (2) The Minister must present to the Legislative Assembly a statement
16 of the reasons for the suspension not later than the first sitting day
17 after the day the chief planning executive is suspended.
- 18 (3) If, not later than 6 sitting days after the day the statement is
19 presented, the Legislative Assembly resolves to require the
20 Executive to end the chief planning executive's appointment, the
21 Executive must end the chief planning executive's appointment.
- 22 (4) The chief planning executive's suspension ends—
- 23 (a) if the Minister does not comply with subsection (2)—at the end
24 of the day the Minister should have presented to the Legislative
25 Assembly the statement mentioned in that subsection; or
- 26 (b) if the Assembly does not pass a resolution mentioned in
27 subsection (3) before the end of the 6 sitting days—at the end
28 of the 6th sitting day.

1 (5) The chief planning executive is entitled to be paid salary and
2 allowances while suspended.

3 *Note* An appointment also ends if the appointee resigns (see Legislation Act,
4 s 210).

1 **Part 3.5** **Authority staff and consultants**

2 **24** **Authority staff**

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

5 **25** **Authority consultants**

- 6 (1) The planning and land authority may engage consultants.
- 7 (2) However, the planning and land authority must not enter into a
8 contract of employment under this section.

1 **Part 3.6** **Public register and associated**
2 **documents**

3 **26 Authority to keep public register**

- 4 (1) The planning and land authority must keep a register (the *public*
5 *register*).
- 6 (2) The planning and land authority may keep the public register in any
7 form the authority considers appropriate.

8 **27 Contents of public register**

- 9 (1) The public register must contain the following:
- 10 (a) for each development application (unless withdrawn)—
- 11 (i) the date the application was lodged; and
- 12 (ii) the applicant's name; and
- 13 (iii) the location of the proposed development; and
- 14 (iv) a summary by the planning and land authority of the
15 proposed development; and
- 16 (v) if the application has been, or is being, publicly notified
17 under division 7.3.4; and
- 18 (vi) whether the application has been amended under
19 section 141; and
- 20 (vii) if representations under section 153 (other than
21 representations that have been withdrawn) have been
22 received on the application; and
- 23 (viii) whether the application has been amended under
24 section 191; and

Section 27

- 1 (ix) if the Minister has decided under section 221 to establish
2 a panel to conduct an inquiry about an EIS for the
3 development proposal to which the application relates;
- 4 (b) if a development application has been decided under
5 section 158—
- 6 (i) the date the application was decided; and
7 (ii) whether the application has been approved, approved
8 subject to a condition or refused; and
9 (iii) whether the decision was made by the Minister after
10 calling in the application under division 7.3.5; and
11 (iv) whether the decision on the application has been
12 reconsidered under division 7.3.10; and
13 (v) whether the approval has been amended under
14 section 191;
- 15 (c) for each controlled activity order while the order is in force—
- 16 (i) the place to which the order relates; and
17 (ii) the directions in the order (see s 351 (3)); and
18 (iii) the person to whom the order is directed;
- 19 (d) for each direction under section 359 to carry out rectification
20 work while the direction is in force—
- 21 (i) the place where the work is to be carried out; and
22 (ii) the person directed to carry out the work;
- 23 (e) for each prohibition notice given under section 370 while the
24 notice is in force—
- 25 (i) the place to which the notice relates; and
26 (ii) the person to whom the notice is given.

- 1 (2) The public register may contain any other information that the
2 planning and land authority considers appropriate.
- 3 (3) However, the public register must not contain—
- 4 (a) associated documents for development applications,
5 development approvals or leases; or
- 6 *Note Associated document*—see s 29.
- 7 (b) the name of the applicant for a controlled activity order.
- 8 (4) To remove any doubt—
- 9 (a) if the planning and land authority approves an exclusion
10 application under section 404 in relation to part of a document
11 required to be included on the register, the part of the
12 document must not be included in the register; and
- 13 *Note* A note about the exclusion must be included in the register (see
14 s 404 (7)).
- 15 (b) if a document required to be included on the register contains
16 information (*concerning information*) that must not be made
17 available to the public under section 405, the information must
18 not be included in the register.

19 **28 Inspection etc of public register and associated**
20 **documents**

- 21 (1) The planning and land authority must ensure that, during business
22 hours, the public register and associated documents are available for
23 public inspection.
- 24 (2) The planning and land authority must allow people inspecting the
25 public register and associated documents to make copies of, or take
26 extracts from, the register and associated documents.

- 1 **29** **Meaning of *associated document*—pt 3.6**
- 2 (1) For this part, each of the following is an *associated document* for a
- 3 development application (other than an application that has been
- 4 withdrawn):
- 5 (a) information required under section 136 (2) (c), (d) (i) or (e) (i)
- 6 to accompany an application;
- 7 (b) an assessment required under section 136 (2) (d) (ii) or (g) to
- 8 accompany the application;
- 9 (c) a completed EIS required under section 136 (2) (e) (ii) to
- 10 accompany the application;
- 11 *Note* For when an EIS is completed, see s 203.
- 12 (d) a survey certificate required under section 136 (2) (i) to
- 13 accompany the application;
- 14 (e) if the planning and land authority has asked for further
- 15 information under section 138—information provided in
- 16 accordance with the request;
- 17 (f) if the planning and land authority corrects the application
- 18 under section 140—the notice of the correction (see s 140 (2));
- 19 (g) if the applicant has asked the authority to amend the
- 20 development application under section 141—any document
- 21 provided by the applicant to support the request;
- 22 (h) an agreement by an entity to the development proposed in the
- 23 application (see s 145 (2) (b));
- 24 (i) if the application is referred to an entity under division 7.3.3—
- 25 the advice of the entity in relation to the development
- 26 application (see s 146 (2));
- 27 (j) if 1 or more representations have been made under section 153
- 28 about the application—each representation (other than a
- 29 representation that has been withdrawn);
-

- 1 (k) if the Minister decides the application—the statement by the
2 Minister in relation to the application presented to the
3 Legislative Assembly under section 157 (2);
- 4 (l) the notice of the decision on the application given under
5 division 7.3.8;
- 6 (m) if the applicant for the development application applies under
7 section 185 for reconsideration of a decision to refuse to
8 approve the development—any information included in the
9 application;
- 10 (n) if the planning and land authority reconsiders a decision to
11 refuse to approve the development—the notice of the decision
12 on reconsideration under section 189;
- 13 (o) a plan, drawing or specification of a proposed building,
14 structure or earthworks if the plan, drawing or specification—
- 15 (i) is part of the application (whether as originally made or as
16 amended); or
- 17 (ii) is approved as part of the approval of the application
18 under section 158; or
- 19 (iii) is required to be prepared by the applicant under a
20 condition of an approval before the development, or a
21 stated part it, starts;
- 22 (p) if a panel conducts an inquiry about an EIS for the
23 development proposal to which the application relates—the
24 report the panel gives the Minister under section 223 on the
25 results of the inquiry.

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

Section 29

- 1 (2) For this part, each of the following is an *associated document* for a
2 development approval:
- 3 (a) if the approval holder applies under section 185 for
4 reconsideration of the decision to approve the development
5 subject to conditions—any information included in the
6 application;
- 7 (b) if the planning and land authority reconsiders the decision to
8 approve the development subject to conditions—the notice of
9 the decision on reconsideration under section 189;
- 10 (c) if the planning and land authority corrects the approval under
11 section 190—the notice about the correction (see s 190 (2));
- 12 (d) if the approval holder has applied to amend the approval under
13 section 191—any information included in the application;
- 14 (e) a plan, drawing or specification of a proposed building,
15 structure or earthworks if the plan, drawing or specification is
16 required to be prepared by the applicant under a condition of
17 an approval before the development, or a stated part of it,
18 starts.
- 19 (3) However, for this part, an *associated document* does not include—
- 20 (a) the plans, drawings or specifications of any residential part of a
21 building or proposed building, other than plans, drawings or
22 specifications that only show the height and external
23 configuration of the building or proposed building; or
- 24 (b) information in relation to which an exclusion application has
25 been approved under section 404; or
- 26 (c) information that must not be made available to the public under
27 section 405.

1 **Chapter 4 The land development agency**

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

4 *Notes to pt 4.1*

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

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

12 **30 Establishment of land agency**

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

14 **31 Functions of land agency**

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

16 (a) to develop land;

17 (b) to carry out works for the development and enhancement of
18 land;

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

20 (2) The land agency may exercise any other function given to the land
21 agency under this Act or another territory law.

- 1 (3) The land agency may exercise its functions—
2 (a) alone; or
3 (b) through subsidiaries, joint ventures or trusts; or
4 (c) by holding shares in, or other securities of, corporations.
5 (4) The land agency must exercise its functions—
6 (a) in accordance with the object of the territory plan; and
7 (b) in accordance with the latest statement of intent for the land
8 agency.

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

11 *Note 2* For the object of the territory plan, see s 47.

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

15 **32 Exercise of land agency functions**

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

18 *Note* The Minister may give the land agency directions under s 36.

1 **Part 4.2** **Financial and general land**
2 **agency provisions**

3 *Note to pt 4.2*

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

6 **33 Proceeds of lease sales**

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

9 **34 Payment of funds to Territory**

10 (1) The Treasurer may, in writing, direct the land agency to pay to the
11 Territory—

12 (a) the amount stated in the direction; or

13 (b) an amount calculated in the way stated in the direction.

14 (2) The Treasurer may also direct the land agency, in a direction under
15 subsection (1) or another instrument, about—

16 (a) how to make the payment; and

17 (b) when to make the payment; and

18 (c) the conditions relating to payment.

19 (3) In giving a direction under subsection (1), the Treasurer must have
20 regard to—

21 (a) the land agency's assets and liabilities; and

22 (b) the land agency's income and expenditure; and

23 (c) the land agency's ability to exercise its functions; and

- 1 (d) the requirement that the Territory obtain a reasonable return
2 from the development and disposal of land.
- 3 (4) The Treasurer must—
- 4 (a) present a copy of a direction under subsection (1) to the
5 Legislative Assembly not later than 6 sitting days after the day
6 it is given to the land agency; and
- 7 (b) if the copy would not be presented to the Legislative Assembly
8 before the end of the period of 10 working days after the day
9 the copy is given to the land agency—give a copy to the
10 members of the Legislative Assembly before the end of the 10-
11 day period.
- 12 (5) If subsection (4) is not complied with, the direction is taken to have
13 been revoked at the end of the period when the copy of the direction
14 should have been presented or given to members.

15 **35 Liability for territory taxes**

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

18 **36 Ministerial directions to land agency**

- 19 (1) The Minister may give written directions to the land agency about
20 the principles that are to govern the exercise of its functions.
- 21 (2) Before giving a direction, the Minister must—
- 22 (a) tell the land agency about the proposed direction; and
- 23 (b) give the land agency a reasonable opportunity to comment on
24 the proposed direction; and
- 25 (c) consider any comments made by the land agency.
- 26 (3) A direction is a notifiable instrument.

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

1 (4) A direction must be notified under the Legislation Act not later than
2 10 working days after the day it is made.

3 (5) If subsection (4) is not complied with, the direction is taken to have
4 been revoked at the end of the 10 working days.

5 **37 Territory to compensate land agency for cost of**
6 **complying with directions**

7 (1) The Territory must pay to the land agency the reasonable net cost of
8 complying with a direction under section 36.

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

12 **38 Land agency board committees**

13 (1) The land agency board—

14 (a) must establish an audit committee; and

15 (b) may establish any other committee; and

16 (c) may appoint land agency board members and other people to
17 committees.

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

20 (3) Also, the chair of the audit committee must be a land agency board
21 member.

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

1 **39 Land agency's annual report**

2 A report prepared by the land agency under the *Annual Reports*
3 (*Government Agencies*) Act 2004 for a financial year must include—

4 (a) a copy of any direction given under section 36 (Ministerial
5 directions to land agency) during the year; and

6 (b) a statement by the land agency about action taken during the
7 year to give effect to any direction given (whether before or
8 during the year) under that section.

9 *Note* **Financial year** has an extended meaning in the *Annual Reports*
10 (*Government Agencies*) Act 2004, s 6.

11 **40 Delegation by land agency**

12 The land agency may delegate its functions, including functions
13 delegated to it by the authority, to the chief executive officer or a
14 land agency staff member.

15 *Note* For the making of delegations and the exercise of delegated functions,
16 see the Legislation Act, pt 19.4.

1 **Part 4.3** **Land agency board**

2 **41** **Establishment of land agency board**

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

4 **42** **Land agency board members**

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

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

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

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

- 12 (a) land development;
13 (b) landscape architecture;
14 (c) sustainable development;
15 (d) economics;
16 (e) public law;
17 (f) finance or accounting;
18 (g) public administration;
19 (h) engineering.

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

- 22 (a) the chief planning executive;
23 (b) a member of the planning and land authority staff.

1 (4) The appointment of a member, other than the chief executive
2 officer, must be for a term of not longer than 4 years.

3 *Note* A person may be reappointed to a position if the person is eligible to be
4 appointed to the position (see Legislation Act, s 208 and dict, pt 1, def
5 ***appoint***).

1 **Part 4.4** **Land agency staff and**
2 **consultants**

3 **43** **Land agency staff**

4 The land agency's staff must be employed under the *Public Sector*
5 *Management Act 1994*.

6 *Note* The *Public Sector Management Act 1994*, s 24 provides that the chief
7 executive officer of a territory instrumentality has all the powers of a
8 chief executive under the Act in relation to the instrumentality staff to
9 be employed under that Act (including, for example, in relation to the
10 appointment of people to, or the employment of people for, that staff).
11 Under that Act, s 3, def *chief executive officer*, the chief executive
12 officer of an instrumentality is the person who has responsibility for
13 managing its affairs.

14 **44** **Land agency consultants**

- 15 (1) The land agency may engage consultants.
16 (2) However, the land agency must not enter into a contract of
17 employment under this section.

1 **Chapter 5** **Territory plan**

2 *Notes to ch 5*

3 Fees may be determined under s 415 for provisions of this chapter.

4 If a form is approved under s 416 for a provision of this chapter, the form must be
5 used.

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

8 **Part 5.1** **The territory plan, its object and**
9 **effect**

10 **45** **Territory plan**

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

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

13 **46** **Public availability of territory plan**

14 (1) The territory plan is a notifiable instrument.

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

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

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

1 **47 Object of territory plan**

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

7 **48 Giving effect to object of territory plan**

- 8 (1) The territory plan must give effect to its object in a way that gives
9 effect to sustainability principles.
- 10 (2) The territory plan must set out the planning principles and policies,
11 including policies that contribute to achieving a healthy
12 environment in the ACT, for giving effect to its object.

13 **49 Effect of territory plan**

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

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

19 *Note 2* The Territory, the Executive, a Minister or a territory authority are also
20 prevented from doing anything inconsistent with some draft variations
21 of the territory plan (see s 64 and s 70).

1 **Part 5.2** **Contents of territory plan**

2 **50** **Contents of territory plan**

3 (1) The territory plan must include the following:

- 4 (a) a statement of strategic directions;
- 5 (b) objectives for each zone;
- 6 (c) development tables;
- 7 (d) codes;
- 8 (e) a map (the *territory plan map*).

9 *Note* For more about development tables, see s 53. For more about codes,
10 see s 54. For more about a territory plan map, see s 55.

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

- 12 (a) identify future urban areas and include the structure plans that
13 apply to those areas; and
- 14 (b) identify areas of public land reserved in the plan (whether in a
15 map or elsewhere in the plan) for a purpose mentioned in
16 section 309 (Reserved areas—public land); and
- 17 (c) to give effect to the object of the plan—provide for other
18 matters relevant to the exercise of the powers of the Territory,
19 the Executive or a territory authority under a territory law; and
- 20 (d) include anything else relevant to the object of the territory
21 plan.

22 **51** **Statement of strategic directions**

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

- 1 (2) The function of the statement of strategic directions is to—
2 (a) contain broad strategic principles to guide long term planning
3 for the ACT; and
4 (b) guide the preparation and making of variations to the territory
5 plan; and
6 (c) guide environmental impact statements, planning reports and
7 strategic environmental assessments.
8 (3) The statement of strategic directions in the territory plan should
9 promote the planning strategy.

10 **52 Objectives for zones**

- 11 (1) The objectives for a zone set out the policy outcomes intended to be
12 achieved by applying the applicable development table and code to
13 the zone.
14 (2) Each objective for a zone must be consistent with the statement of
15 strategic directions.

16 **53 Development tables**

- 17 (1) A development table for a zone must set out—
18 (a) which assessment track applies to development proposals; and
19 *Note* Assessment tracks are dealt with in ch 7.
20 (b) development that is exempt from requiring development
21 approval; and
22 (c) development that is prohibited; and
23 (d) the code that development proposals must comply with.

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

3 **Example of possible condition**

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

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

10 **54 Codes in territory plan**

- 11 (1) A code (other than a general code) in the territory plan must contain
12 either or both of the following:

13 (a) the detailed rules (the *code requirements*) that apply to
14 development proposals the code applies to;

15 (b) the criteria (the *merit criteria*) that apply to development
16 proposals the code applies to, other than proposals in the code
17 track.

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

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

22 *Note* A concept plan is a precinct code (see s 92 (b)).

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

- 25 (5) A code that sets out rules applicable to the Territory, the Executive,
26 a Minister or a territory authority, whether or not it also contains
27 policies to be complied with, code requirements and merit criteria, is
28 a *general code*.

- 1 **55** **Territory plan map**
- 2 The territory plan map must set out, in map-form, zones and
- 3 precincts in the ACT.

1 **Part 5.3** **Variations of territory plan other**
2 **than technical amendments**

3 *Note to pt 5.3*

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

7 **Division 5.3.1** **Overview, interpretation and**
8 **application—pt 5.3**

9 **56** **How territory plan is varied under pt 5.3**

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

12 (a) the planning and land authority prepares a draft plan variation
13 (see s 59); or

14 (b) the Minister directs the authority to revise the territory plan or
15 a provision of the plan (see s 13 (1) (b)).

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

18 (2) If the planning and land authority prepares a draft plan variation, the
19 authority must prepare a consultation notice (see s 62) that invites
20 comments on the draft plan variation and, when publicly notified,
21 may give the draft plan variation interim effect (see s 63 and s 64).

22 (3) The planning and land authority—

23 (a) may revise or withdraw the draft plan variation after the end of
24 public consultation (see s 67); and

- 1 (b) unless the variation is withdrawn, must—
- 2 (i) give the variation to the Minister for approval (see s 68);
- 3 and
- 4 (ii) give notice that the variation and other documents are
- 5 available for public inspection (see s 69).
- 6 (4) If notice is given of the draft plan variation's availability for
- 7 inspection, the draft plan variation notified may have interim effect
- 8 (see s 70 and s 71).
- 9 (5) The Minister may, after receiving a committee report about the draft
- 10 plan variation or in other circumstances, approve the plan variation,
- 11 or take other action under section 75 (Minister's powers in relation
- 12 to draft plan variations).
- 13 (6) The Minister may revoke an approval of a draft plan variation
- 14 before presenting the approved plan variation to the Legislative
- 15 Assembly (see s 76), but otherwise must present the approved plan
- 16 variation to the Legislative Assembly (see s 78).
- 17 (7) The Legislative Assembly may reject the plan variation (see s 79)
- 18 but, if the plan variation, or a provision of the plan variation, is not
- 19 rejected, the Minister must fix a day when the variation commences
- 20 (see s 82).
- 21 (8) Different provisions apply to plan variations that are technical
- 22 amendments (see s 86), including future urban areas (see pt 5.4 and
- 23 pt 5.5, particularly s 94).

24 **57 Definitions—pt 5.3**

25 In this part:

26 *background papers*, in relation to a draft plan variation or plan

27 variation—each of the following is a *background paper* in relation

28 to the variation:

- 29 (a) an explanatory statement;

- 1 (b) a copy of—
- 2 (i) any relevant direction of the Minister; and
- 3 (ii) any comment during consultation under section 60 (b) on
- 4 the proposed draft plan variation from which the draft
- 5 plan variation or plan variation came; and
- 6 (iii) any relevant planning report or strategic environmental
- 7 assessment;
- 8 (c) a statement, by the planning and land authority, of the reasons
- 9 for any inconsistency between the draft plan and—
- 10 (i) a direction mentioned in paragraph (b) (i); or
- 11 (ii) a comment mentioned in paragraph (b) (ii); or
- 12 (iii) a recommendation in a relevant planning report or
- 13 strategic environmental assessment;
- 14 (d) any other document—
- 15 (i) considered by the authority to be necessary or useful in
- 16 explaining the variation; or
- 17 (ii) designated by the authority in writing as a background
- 18 paper.

19 **consultation comments**, in relation to a draft plan variation—see

20 section 62 (1) (b).

21 **consultation notice**, for a draft plan variation—see section 62 (1).

22 **consultation period**, for a draft plan variation—see

23 section 62 (1) (a).

24 **corresponding plan variation**, for a draft plan variation, means the

25 plan variation developed from the draft plan variation.

26 **draft plan variation**—see section 59.

1 *plan variation* means a draft plan variation approved by the
2 Minister under section 75 (Minister's powers in relation to draft
3 plan variations).

4 *public availability notice*, for a draft plan variation—see section 69.

5 *technical amendments*—see section 86.

6 **58 Pt 5.3 does not apply to technical amendments**

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

9 **Division 5.3.2 Consultation on draft plan variations**

10 **59 Preparation of draft plan variations**

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

13 **60 Consultation etc about draft plan variations being
14 prepared**

15 The planning and land authority must, in preparing a draft plan
16 variation under section 59—

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

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

21 (i) the national capital authority;

22 (ii) the conservator of flora and fauna;

23 (iii) the environment protection authority;

24 (iv) the heritage council;

- 1 (v) if the draft plan variation would, if made, be likely to
2 affect unleased land or leased public land—each
3 custodian for the land likely to be affected; and
- 4 (c) consider any relevant planning report or strategic
5 environmental assessment; and
- 6 *Note* The planning and land authority may prepare a planning report or
7 strategic environmental assessment in relation to the proposed draft plan
8 variation (see s 97 and s 99).
- 9 (d) if the draft plan variation would, if made, vary the statement of
10 strategic directions—consider whether the draft plan variation,
11 if made, would promote the planning strategy.

12 **61 Ministerial requirements for draft plan variations being**
13 **prepared**

- 14 (1) This section applies if the authority tells the Minister under
15 section 60 that the authority is preparing a draft plan variation.
- 16 (2) The Minister may direct the planning and land authority to do 1 or
17 both of the following:
- 18 (a) to prepare a planning report or strategic environmental
19 assessment in relation to the draft plan variation that the
20 authority is preparing;
- 21 (b) to tell the Minister when the draft plan variation being prepared
22 is ready to be notified under section 62.
- 23 *Note 1* The planning and land authority must comply with a direction
24 given by the Minister (see s 12).
- 25 *Note 2* Requirements for planning reports and strategic environmental
26 assessments are dealt with in pt 5.6.
- 27 (3) To remove any doubt, the validity of a corresponding plan variation
28 for a draft plan variation is not affected by a failure to comply with
29 subsection (2) (b) in relation to the draft plan variation.

1 **62 Public consultation—notification**

2 (1) Before giving a draft plan variation to the Minister for approval
3 under section 68, the planning and land authority must prepare a
4 notice (a *consultation notice*)—

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

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

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

18 (d) that complies with section 63.

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

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

24 (3) The following are notifiable instruments:

25 (a) the consultation notice;

26 (b) any extension notice.

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

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

3 *Note* The planning and land authority must make copies of the draft plan
4 variation and background papers mentioned in the consultation notice
5 available (see s 65).

- 6 (5) This section does not apply in relation to a draft plan variation that
7 has been revised by the planning and land authority in accordance
8 with a direction under section 75 (3) (b) (Minister's powers in
9 relation to draft plan variations).

10 **63 Public consultation—notice of interim effect etc**

- 11 (1) A consultation notice must state—
12 (a) whether or not section 64 applies in relation to the draft plan
13 variation, or part of the draft variation; and
14 (b) where further information about the draft plan variation can be
15 found.
16 (2) A consultation notice that states that section 64 applies—
17 (a) must also state the effect of section 64; and
18 (b) may also state, for section 64 (2), a period not longer than
19 1 year that is the maximum period during which the draft
20 variation, or part, is to have interim effect.

21 **64 Effect of draft plan variations publicly notified**

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

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

6 *Note* The Territory, the Executive, a Minister or a territory authority must
7 also not do anything that is inconsistent with the territory plan (see
8 s 49).

9 (3) In this section:

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

11 (a) starting on the day (the *notification day*) when the consultation
12 notice for the draft plan variation is notified under the
13 Legislation Act (see s 62); and

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

15 (i) the day the public availability notice under section 69 for
16 the draft plan variation is notified in accordance with the
17 Legislation Act;

18 (ii) the day the draft variation, or the corresponding plan
19 variation, is withdrawn under section 67 (1) (b) or
20 section 75 (3) (b) (v);

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

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

23 **65 Public consultation—availability of draft plan variations**
24 **etc**

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

- 1 (2) If, in the planning and land authority's opinion, it would not be in
2 the public interest for part of the draft plan variation or of any
3 background paper to be published, the authority must exclude that
4 part from each copy of the document made available under
5 subsection (1).
- 6 (3) If part of a draft plan variation or a background paper is excluded
7 under subsection (2), each copy of the document made available for
8 public inspection and purchase under subsection (1) must include a
9 statement to the effect that an unmentioned part of the document has
10 been excluded in the public interest.

11 **66 Public inspection of comments on draft plan variations**

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

17 *Note* This section is subject to s 404 and s 405.

18 **Division 5.3.3 Action after consultation about draft**
19 **plan variations**

20 **67 Revision and withdrawal of draft plan variations**

- 21 (1) After the end of the consultation period for a draft plan variation, the
22 planning and land authority may—
23 (a) revise the draft plan variation; or
24 (b) withdraw the draft plan variation.
- 25 (2) The withdrawal of a draft plan variation must include a statement of
26 the effect of section 64 (Effect of draft plan variations publicly
27 notified) in relation to the withdrawal.

- 1 (3) The withdrawal of a draft plan variation is a notifiable instrument.
2 *Note* A notifiable instrument must be notified under the Legislation Act.
- 3 (4) The planning and land authority must also publish the withdrawal of
4 a draft plan variation in a daily newspaper on the same day, or as
5 soon as practicable after, the authority prepares the withdrawal.
- 6 (5) In revising or withdrawing a draft plan variation under
7 subsection (1), the planning and land authority must consider
8 written comments (including consultation comments) about the draft
9 variation received from any entity, including the national capital
10 authority.
- 11 (6) In addition to its power under subsection (1), the planning and land
12 authority may, at any time before a draft plan variation is given, or
13 given again, to the Minister, revise the variation to correct a formal
14 error.

15 **Division 5.3.4 Draft plan variations given to Minister**

16 **68 Draft plan variations to be given to Minister etc**

- 17 (1) This section applies to a draft plan variation—
18 (a) if—
19 (i) the consultation period for the variation has ended; and
20 (ii) the planning and land authority has not withdrawn the
21 variation under section 67; and
22 (b) if the draft plan variation has been varied under section 67—as
23 varied under section 67.
- 24 (2) The planning and land authority must give the draft plan variation to
25 the Minister for approval, together with—
26 (a) the background papers relating to the variation; and

- 1 (b) a written report setting out the issues raised in any written
2 comments (including consultation comments) about the
3 variation; and
- 4 (c) a written report about the authority's consultation with—
5 (i) the public; and
6 (ii) the national capital authority; and
7 (iii) the conservator of flora and fauna; and
8 (iv) the environment protection authority; and
9 (v) the heritage council; and
10 (vi) if the draft plan variation would, if made, be likely to
11 affect unleased land or leased public land—each
12 custodian for the land likely to be affected; and
- 13 (d) a copy of any written document given to the Minister by the
14 national capital authority in relation to the draft plan variation.
- 15 *Note* The Minister must give a copy of the documents given to the Minister
16 under this section to a committee of the Legislative Assembly (see
17 s 72).

18 **69 Public notice of documents given to Minister**

- 19 (1) The planning and land authority must prepare a notice (a *public*
20 *availability notice*) stating that the documents mentioned in
21 section 68 (2) (including the draft plan variation) are available for
22 public inspection.
- 23 (2) A public availability notice is a notifiable instrument.
- 24 *Note* A notifiable instrument must be notified under the Legislation Act.
- 25 (3) The planning and land authority must also publish a public
26 availability notice in a daily newspaper.

- 1 (4) The planning and land authority must make copies of the documents
2 mentioned in section 68 (2) available for public inspection during
3 office hours during the period, and at the places, stated in the public
4 availability notice.

5 **70 Public availability notice—notice of interim effect etc**

- 6 (1) A public availability notice must state—
7 (a) whether or not section 71 applies in relation to the draft plan
8 variation, or part of the draft variation; and
9 (b) where further information about the draft plan variation can be
10 found.
11 (2) A public availability notice that states that section 71 applies must
12 also state the effect of section 71.

13 **71 Effect of draft plan variations given to Minister**

- 14 (1) This section applies to a draft plan variation if a public availability
15 notice states that it applies.
16 (2) The Territory, the Executive, a Minister or a territory authority must
17 not, during the defined period, do or approve the doing of anything
18 that would be inconsistent with the territory plan if it were varied in
19 accordance with the draft plan variation.

20 *Note* The Territory, the Executive, a Minister or a territory authority must
21 also not do anything that is inconsistent with the territory plan (see
22 s 49).

- 23 (3) In this section:
24 *defined period*, for a draft plan variation, means the period—
25 (a) starting on the day (the *notification day*) when the draft plan
26 variation given to the Minister is notified under the Legislation
27 Act (see s 69); and

- 1 (b) ending on the earliest of the following days:
- 2 (i) the day the corresponding plan variation, or part of it,
3 commences;
- 4 *Note* The Minister must fix a day for the variation, or part of it, to
5 commence under s 82 or s 83.
- 6 (ii) the day the corresponding plan variation is rejected by the
7 Legislative Assembly;
- 8 (iii) the day the corresponding plan variation is withdrawn in
9 accordance with a requirement under
10 section 75 (3) (b) (v) or section 83 (3) (b);
- 11 (iv) the period of 1 year after notification day ends.

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

13 **Division 5.3.5 Consideration of draft plan variations**
14 **by Assembly committee**

15 **72 Consideration of draft plan variations by Legislative**
16 **Assembly committee**

- 17 (1) This section applies if the Minister is given a draft plan variation
18 under section 68.
- 19 (2) The Minister may, not later than 20 working days after the day the
20 Minister receives the draft plan variation, refer the draft plan
21 variation documents to an appropriate committee of the Legislative
22 Assembly together with a request that the committee report on the
23 draft plan variation to the Legislative Assembly.
- 24 (3) To remove any doubt, if the Minister does not refer a draft plan
25 variation to an appropriate committee of the Legislative Assembly,
26 the committee is not prevented from considering the draft plan
27 variation documents if the draft plan variation is otherwise referred
28 to the committee.

- 1 (4) In this section:
2 *draft plan variation documents* means—
3 (a) the draft plan variation; and
4 (b) the documents mentioned in section 68 (2) that relate to the
5 draft plan variation.
- 6 **73 Committee reports on draft plan variations**
- 7 (1) This section applies if the Minister has referred a draft plan variation
8 to a committee of the Legislative Assembly under section 72.
- 9 (2) The Minister—
- 10 (a) unless section 74 applies, must not take action under section 75
11 in relation to the draft plan variation until the committee of the
12 Legislative Assembly has reported on the variation; and
- 13 (b) after the committee reports on the variation—must take action
14 under section 75 in relation to the variation.
- 15 **74 Committee fails to report promptly on draft plan**
16 **variations**
- 17 (1) This section applies if—
- 18 (a) the Minister has referred a draft plan variation to a committee
19 of the Legislative Assembly under section 72; and
- 20 (b) the committee has not reported on the variation by the end of
21 the period of 6 months starting on the day after the day the
22 variation is referred.
- 23 (2) The Minister may take action under section 75 in relation to the
24 draft plan variation, even though the committee of the Legislative
25 Assembly has not reported on the variation.

1 **Division 5.3.6 Ministerial and Legislative Assembly**
2 **action on draft plan variations**

3 **75 Minister's powers in relation to draft plan variations**

- 4 (1) This section applies if—
- 5 (a) the Minister is given a draft plan variation under section 68 or
6 section 77 (3) or (4); or
- 7 (b) the Minister revokes the approval of a plan variation (see s 76).
- 8 (2) However, this section does not apply if—
- 9 (a) a draft plan variation has been referred to an appropriate
10 committee of the Legislative Assembly (other than under
11 section 72); and
- 12 (b) either—
- 13 (i) the committee has not reported on the draft plan variation;
14 or
- 15 (ii) the committee has reported, but the Minister has not
16 considered the report.
- 17 (3) The Minister must—
- 18 (a) approve the draft plan variation in the form given; or
- 19 *Note* A draft plan variation approved by the Minister is a plan variation
20 (see s 57, def *plan variation*).
- 21 (b) return the draft plan variation to the planning and land
22 authority and direct the authority to do 1 or more of the
23 following:
- 24 (i) conduct further stated consultation;
- 25 (ii) consider any relevant planning report or strategic
26 environmental assessment;

- 1 (iii) consider any revision suggested by the Minister;
- 2 (iv) revise the draft plan variation in a stated way;
- 3 (v) withdraw the draft plan variation.
- 4 (4) Before taking action under subsection (3), the Minister must
- 5 consider—
- 6 (a) any recommendation made by a committee of the Legislative
- 7 Assembly in relation to the draft variation, or related
- 8 documents, referred to the committee under section 72 or
- 9 otherwise; and
- 10 (b) if the draft plan variation would, if made, vary the statement of
- 11 strategic directions—whether the variation would promote the
- 12 planning strategy.
- 13 *Note—par (a)*
- 14 The Minister must not take action under this section in some circumstances
- 15 if the committee has not reported (see s 73 and s 74).
- 16 *Note—par (b)*
- 17 The territory plan has no effect to the extent that it is inconsistent with the
- 18 national capital plan, but is taken to be consistent with the national capital
- 19 plan to the extent that it can operate concurrently with it (see *Australian*
- 20 *Capital Territory (Planning and Land Management) Act 1988* (Cwlth),
- 21 s 26).
- 22 (5) The following are notifiable instruments:
- 23 (a) a direction under subsection (3) (b);
- 24 (b) the withdrawal of a draft plan variation by the planning and
- 25 land authority as directed under subsection (3) (b) (v).
- 26 *Note* A notifiable instrument must be notified under the Legislation Act.

- 1 (6) The planning and land authority must also publish the withdrawal of
2 a draft plan variation as directed under subsection (3) (b) (v) in a
3 daily newspaper on the same day, or as soon as practicable after, the
4 withdrawal is notified under the Legislation Act.

5 **76 Minister may revoke approval of draft plan variations**
6 **before presentation**

- 7 (1) This section applies if—
8 (a) the Minister has approved a draft plan variation under
9 section 75 (3) (a); and
10 (b) the plan variation has not been presented to the Legislative
11 Assembly.
12 (2) The Minister may revoke the approval and return the plan variation
13 to the planning and land authority.
14 (3) A plan variation returned to the planning and land authority under
15 this section must be treated by the Minister as a draft plan variation
16 to which section 75 applies.

17 **77 Return of draft plan variations to authority**

- 18 (1) This section applies if the Minister returns a draft plan variation to
19 the planning and land authority with a direction under
20 section 75 (3) (b).
21 (2) The planning and land authority must comply with each direction.
22 (3) If the direction is given under section 75 (3) (b) (i), (ii) or (iii), the
23 planning and land authority may revise the draft variation and give it
24 to the Minister for approval with a written report about—
25 (a) the authority's compliance with the Minister's direction; and
26 (b) any further revision of the draft variation under section 67 (6).

- 1 (4) If the direction is given under section 75 (3) (b) (iv), the planning
2 and land authority must give the Minister the draft variation, as
3 revised in accordance with the direction, together with a written
4 report about any further revision of the draft variation under
5 section 67 (6).

6 **78 Presentation of plan variations to Legislative Assembly**

- 7 (1) The Minister must present to the Legislative Assembly, not later
8 than 5 sitting days after the day the Minister approves a plan
9 variation, copies of each the following:
10 (a) the plan variation;
11 (b) the background papers relating to the variation;
12 (c) any report mentioned in section 77 (3) or (4).
13 (2) Subsection (1) is subject to section 76 (Minister may revoke
14 approval of draft plan variations before presentation).
15 (3) If a plan variation is not presented to the Legislative Assembly in
16 accordance with subsection (1), the plan variation does not come
17 into effect.

18 **79 Assembly may reject plan variations completely or partly**

- 19 (1) The Legislative Assembly may by resolution reject a plan variation,
20 or a provision of the plan variation, presented to the Assembly.
21 (2) Notice (a *rejection notice*) of a motion to reject the plan variation or
22 a provision of the plan variation must be given not later than
23 5 sitting days after the day the plan variation is presented to the
24 Legislative Assembly.

- 1 (3) The plan variation or provision stated in a rejection notice given in
2 accordance with subsection (2) is taken to have been rejected by the
3 Legislative Assembly if, at the end of 5 sitting days after the day the
4 rejection notice has been given in the Legislative Assembly—
5 (a) the motion has not been called on; or
6 (b) the motion has been called on and moved and has not been
7 withdrawn or otherwise disposed of.

8 **80 Effect of dissolution etc of Legislative Assembly**

- 9 (1) This section applies if, before the end of 5 sitting days after the day
10 a rejection notice has been given in the Legislative Assembly in
11 accordance with section 79 (2)—
12 (a) the Legislative Assembly is dissolved or expires; and
13 (b) at the time of dissolution or expiry—
14 (i) the notice has not been withdrawn and the motion has not
15 been called on; or
16 (ii) the motion has been called on and moved and has not
17 been withdrawn or otherwise disposed of.
18 (2) If this section applies, the plan variation is taken, for section 79 (2)
19 and (3), to have been presented to the Legislative Assembly on the
20 first sitting day of the Legislative Assembly after the next general
21 election of members of the Assembly.

22 **81 Consequences of rejection of plan variations by**
23 **Legislative Assembly**

- 24 (1) This section applies if a plan variation is completely rejected under
25 section 79 (1), or taken to be completely rejected under
26 section 79 (3).

- 1 (2) The plan variation does not come into force if this section applies.
- 2 *Note* The interim effect of the draft plan variation also ends (see s 71 (3),
3 def *defined period*, par (b) (ii)).
- 4 (3) The planning and land authority must prepare a notice stating that
5 the plan variation has been rejected.
- 6 (4) The notice is a notifiable instrument.
- 7 *Note* A notifiable instrument must be notified under the Legislation Act.
- 8 (5) The planning and land authority must also publish the notice in a
9 daily newspaper on the same day, or as soon as practicable after, the
10 rejection is notified under the Legislation Act.

11 **Division 5.3.7 Commencement and publication of**
12 **plan variations**

13 **82 Commencement and publication of plan variations**

- 14 (1) This section applies if—
- 15 (a) at the end of 5 sitting days after the day a plan variation is
16 presented to the Legislative Assembly, the Assembly has not
17 passed a resolution rejecting the variation or any provision of
18 it; and
- 19 (b) the plan variation, or a provision of the plan variation, is not
20 taken to have been rejected under section 79 (3).
- 21 (2) The Minister must fix a day when the plan variation is to
22 commence.
- 23 *Note 1* An instrument under this subsection is a *commencement notice* (see
24 Legislation Act, s 11). A commencement notice must be notified under
25 the Legislation Act. The plan variation commences in accordance with
26 the commencement notice.
- 27 *Note 2* On commencement, a plan variation varies the territory plan according
28 to its terms.

- 1 (3) The planning and land authority must publish in a daily newspaper
2 details of—
3 (a) the commencement notice under subsection (2); and
4 (b) where copies of the plan variation may be inspected or
5 purchased.
6 (4) The planning and land authority must make copies of the plan
7 variation available for inspection or purchase during office hours at
8 the places, and during the period, published in the newspaper under
9 subsection (3) (b).

10 **83 Partial rejection of plan variations by Legislative**
11 **Assembly**

- 12 (1) This section applies if a plan variation is partly rejected under
13 section 79 (1) (Assembly may reject plan variations completely or
14 partly), or taken to be partly rejected under section 79 (3).
15 (2) A provision of a plan variation does not come into force if—
16 (a) it is rejected, or taken to be rejected, by the Legislative
17 Assembly under section 79 (1) or (3); or
18 (b) it is withdrawn under subsection (3) (b).
19 (3) The Minister must, in relation to each provision of the plan variation
20 that is not rejected—
21 (a) fix a day when the provision (an *approved provision*) is to
22 commence; or
23 (b) withdraw the provision.

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

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

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

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

3 **84 Partial rejection of plan variations—publication etc**

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

6 (a) a commencement notice under section 83 (3) (a) for a
7 provision (an *approved provision*); or

8 (b) a withdrawal notice under section 83 (3) (b).

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

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

1 **Part 5.4** **Plan variations—technical**
2 **amendments**

3 **85** **Definitions—pt 5.4**

4 In this part:

5 *code variation*—see section 86 (b).

6 *error variation*—see section 86 (a).

7 *limited consultation* means consultation under section 89.

8 *technical amendment*—see section 86.

9 **86** **What are *technical amendments* of territory plan?**

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

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

13 (i) would not adversely affect anyone’s rights if approved;
14 and

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

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

18 (i) would only change a code; and

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

21 (iii) is not an error variation;

- 1 (c) a variation in relation to a future urban area under section 94
2 (Rezoning—future urban areas) or section 95 (When land
3 ceases to be in future urban area);
- 4 (d) a variation required to bring the territory plan into line with the
5 national capital plan after a change to the national capital plan.

6 **87 Is consultation needed for technical amendments?**

- 7 (1) Only limited consultation is needed for the following technical
8 amendments:
- 9 (a) a code variation;
- 10 (b) a variation in relation to a future urban area under section 94
11 (Rezoning—future urban areas).
- 12 (2) A technical amendment, other than a technical amendment for
13 which limited consultation is needed, does not need any consultation
14 before it is made under section 88.

15 **88 Making technical amendments**

- 16 (1) This section applies if—
- 17 (a) the planning and land authority is satisfied that a plan variation
18 would, if made, be a technical amendment; and
- 19 (b) for a technical amendment for which limited consultation is
20 needed—the limited consultation has taken place.
- 21 (2) The planning and land authority may put the plan variation in
22 writing.
- 23 (3) The plan variation is a notifiable instrument.

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

Section 89

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

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

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

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

12 (a) describes the variation; and

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

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

17 **89 Limited consultation**

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

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

23 (a) describes the proposed technical amendment; and

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

27 (c) states how and when representations may be made on the
28 amendment.

- 1 (3) The period stated under subsection (2) (c) for making
2 representations must be at least 15 working days.
- 3 (4) The planning and land authority must tell the national capital
4 authority about the proposed technical amendment.
- 5 (5) The planning and land authority must consider—
- 6 (a) any representation made in accordance with the notice under
7 subsection (2); and
- 8 (b) any views of the national capital authority.

1 **Part 5.5** **Plan variations—structure plans**
2 **and rezoning in future urban**
3 **areas**

4 **90** **Including structure plan by plan variation**

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

7 **91** **What is a *structure plan*?**

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

10 *Note 1* Future urban areas may be identified in the territory plan (see
11 s 50 (2) (a)).

12 *Note 2* Certain development may be prohibited in future urban areas (see
13 s 133).

14 **92** **What is a *concept plan*?**

15 A *concept plan*—

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

18 (b) is a precinct code in the territory plan (see s 54 (3)) that
19 guides—

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

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

- 1 **93** **What is an *estate development plan*?**
- 2 (1) An *estate development plan*, for an estate, sets out the proposed
- 3 development of the estate in a way that is consistent with—
- 4 (a) the concept plan for the area where the estate is; and
- 5 (b) any other code that applies to the estate.
- 6 (2) An estate development plan must contain—
- 7 (a) the block boundaries for individual blocks proposed for inside
- 8 the estate and the boundaries proposed for the whole estate;
- 9 and
- 10 (b) the zones proposed for the estate, and any existing zones that
- 11 are to continue to apply.
- 12 (3) An estate development plan may include the following for the
- 13 estate:
- 14 (a) design and construction requirements for roads;
- 15 (b) design and construction requirements for infrastructure works
- 16 and landscaping;
- 17 (c) particular areas for particular detailed purposes;
- 18 (d) building envelopes;
- 19 (e) a tree management plan;
- 20 (f) design and construction requirements for reticulated services;

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

3 **Example for par (c)**

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

6 *Note* An example is part of the Act, is not exhaustive and may extend, but
7 does not limit, the meaning of the provision in which it appears (see
8 Legislation Act, s 126 and s 132).

9 **94 Rezoning—future urban areas**

- 10 (1) The planning and land authority may vary the territory plan under
11 section 88 (Making technical amendments) to rezone land in a
12 future urban area unless the rezoning is inconsistent with the
13 principles and policies in the structure plan for the area.
- 14 (2) The planning and land authority may vary the territory plan under
15 section 88 to change the boundary of a future urban area if the
16 change is—
- 17 (a) consistent with the structure plan for the area; and
- 18 (b) necessary to prevent the boundary intruding on leased land
19 other than as intended.

20 **95 When land ceases to be in future urban area**

- 21 (1) This section applies to an area of land dealt with by an estate
22 development plan if the plan is approved under a development
23 application.
- 24 (2) The planning and land authority must, within a reasonable time after
25 the approval of the estate development plan, vary the territory plan
26 under section 88 (Making technical amendments) to—
- 27 (a) identify the zones that will apply to the land, consistent with
28 the estate development plan; and

- 1 (b) incorporate any other element of the estate development plan
2 that the estate development plan indicates should be ongoing.
- 3 (3) A variation of the territory plan under subsection (2) has the effect
4 that the land dealt with by the estate development plan ceases to be
5 in a future urban area.

1 **Part 5.6** **Planning reports and strategic**
2 **environmental assessments**

3 **96** **What is a *planning report*?**

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

8 *Note* An example is part of the Act, is not exhaustive and may extend, but
9 does not limit, the meaning of the provision in which it appears (see
10 Legislation Act, s 126 and s 132).

- 11 (2) A regulation may prescribe what must be included in a planning
12 report.

- 13 (3) In this section:

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

17 **97** **Preparation of planning reports**

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

21 *Note* The Minister may direct the planning and land authority to prepare a
22 planning report under s 61 and s 238 (2).

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

1 **98** **What is a *strategic environmental assessment*?**

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

5 **Examples of when SEA may be prepared**

- 6 1 major land use policy initiative
7 2 major plan variation

8 *Note* An example is part of the Act, is not exhaustive and may extend, but
9 does not limit, the meaning of the provision in which it appears (see
10 Legislation Act, s 126 and s 132).

11 **99** **Preparation of strategic environmental assessments**

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

17 *Note* The Minister may direct the planning and land authority to prepare a
18 strategic environmental assessment under s 61 (2) (a). The authority is
19 required to prepare an assessment under s 102 (2).

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

24 **100** **Regulation about strategic environmental assessments**

25 A regulation may prescribe—

- 26 (a) how a strategic environmental assessment must or may be
27 developed; and
28 (b) what a strategic environmental assessment must or may
29 contain; and

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Part 5.6

Territory plan
Planning reports and strategic environmental assessments

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

1 **Part 5.7** **Review of territory plan**

2 **101** **Consideration of whether review of territory plan**
3 **necessary**

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

6 *Note* The planning and land authority must review the territory plan if
7 directed to do so by the Minister (see s 13 (1) (b) and s 12) or if the
8 authority decides the plan should be reviewed (see s 102).

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

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

13 (b) is consistent with its object; and

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

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

18 (e) promotes the planning strategy; and

19 (f) meets current community and building industry expectations.

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

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

Section 102

- 1 (b) the authority's decision on whether the plan should be
2 reviewed; and
- 3 (c) the date of the authority's decision.
- 4 (4) A notice under subsection (3) is a notifiable instrument.
- 5 *Note* A notifiable instrument must be notified under the Legislation Act.
- 6 (5) To remove any doubt—
- 7 (a) the planning and land authority need not undertake a review of
8 the territory plan unless—
- 9 (i) the authority decides a review is necessary; or
- 10 (ii) the Minister directs the authority to review the plan (see
11 s 13 (1) (b)); and
- 12 (b) a decision under this section not to review the territory plan
13 does not affect the authority's function of continually
14 reviewing the territory plan.

15 **102 Review of territory plan**

- 16 (1) This section applies if the planning and land authority decides under
17 section 101 that the territory plan should be reviewed.
- 18 (2) The planning and land authority must review the territory plan and,
19 for that purpose, must prepare a strategic environmental assessment
20 in relation to the review.
- 21 *Note* Requirements for strategic environmental assessments are dealt with in
22 pt 5.6.
- 23 (3) After reviewing the territory plan, the planning and land authority
24 must prepare a notice stating—
- 25 (a) that the authority has reviewed the plan; and
- 26 (b) the authority's findings on the review.

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

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

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

- 1 **Part 5.8** **Territory plan—miscellaneous**
- 2 **103** **Limitations on challenge to validity of territory plan**
3 **provisions**
- 4 (1) The validity of a provision of the territory plan must not be
5 questioned in any legal proceeding other than a proceeding begun
6 not later than 3 months after the day the provision, or a variation of
7 the provision, commenced.
- 8 (2) The validity of a provision of the territory plan must not be
9 questioned in any legal proceeding only because—
- 10 (a) the territory plan variation that inserted or varied the provision
11 was inconsistent with the planning strategy; or
- 12 (b) a draft plan variation that became the territory plan variation
13 that inserted or varied the provision was inconsistent with the
14 planning strategy; or
- 15 (c) the provision, or part of it, is or was inconsistent with the
16 planning strategy.

1 Chapter 6 Planning strategy

2 104 Planning strategy

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

7 105 Public availability of planning strategy

8 The planning strategy is a notifiable instrument.

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

10 106 Main object of planning strategy

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

15 107 Relationship with territory plan

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

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

20 108 Consideration of planning strategy

21 (1) The planning strategy must be considered by—

22 (a) the planning and land authority under section 60 and
23 section 101 (2) (e); and

- 1 (b) the Minister under section 75; and
2 (c) the Executive under section 109.
- 3 (2) The planning strategy is not a relevant consideration by the planning
4 and land authority, the Minister or another entity, except as provided
5 by subsection (1).
- 6 (3) Without limiting subsection (2), the planning strategy is not a
7 relevant consideration for a decision under the following provisions:
8 (a) chapter 7 (Development approvals);
9 (b) chapter 8 (Environmental impact statements and inquiries);
10 (c) chapter 9 (Leases and licences);
11 (d) chapter 10 (Management of public land);
12 (e) chapter 11 (Controlled activities).
- 13 (4) The planning strategy must not be considered by—
14 (a) the planning and land authority, the Minister or any other
15 entity, in the exercise of a function under this Act, except as
16 provided under subsection (1); or
17 (b) a court in a proceeding on a decision made by the Minister, the
18 authority or any other entity.
- 19 (5) In this section:
20 *court* includes a tribunal, authority or person with power to require
21 the production of documents or the answering of questions.
- 22 **109 Consideration of whether review of planning strategy**
23 **necessary**
- 24 (1) The Executive must, at least once every 5 years, consider whether
25 the planning strategy should be reviewed.

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

4 *Note* For the main object of the planning strategy, see s 106.

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

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

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

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

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

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

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

16 **110 If review of planning strategy necessary**

17 If the Executive decides under section 109 that the planning strategy
18 should be reviewed, the Executive must arrange for the planning
19 strategy to be reviewed.

Chapter 7 Development approvals

Notes to ch 7

Fees may be determined under s 415 for provisions of this chapter.

If a form is approved under s 416 for a provision of this chapter, the form must be used.

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

Part 7.1 Outline

111 Outline—ch 7

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

(2) The assessment tracks are as follows:

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

Examples of possible code track proposals

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

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

4 **Examples of possible merit track proposals**

- 5 1 childcare centre in residential area
6 2 gymnasium in commercial area
7 3 apartment in commercial area

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

12 **Examples of possible impact track proposals**

- 13 1 constructing a major dam
14 2 constructing a major road, light rail line or other linear transport
15 corridor
16 3 clearing a significant area of native vegetation

17 (3) This chapter also sets out—

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

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

22 **Examples of possible exempt development**

- 23 1 single residence in new housing area
24 2 small shed

25 **Examples of possible prohibited proposals**

- 26 1 a paint factory in a residential area
27 2 commercial office accommodation in a suburban area

1 **Part 7.2** **Assessment tracks for**
2 **development applications**

3 **Division 7.2.1** **Operation of assessment tracks**
4 **generally**

5 **112** **Relationship between development proposals and**
6 **development applications**

- 7 (1) A person who has a development proposal may apply to the
8 planning and land authority for approval to undertake the
9 development proposed.
- 10 (2) If an assessment track applies to a development proposal, the
11 proposal is in that assessment track and that track must be followed
12 in assessing the development application for the proposal.

13 **113** **Application of assessment tracks to development**
14 **proposals**

- 15 (1) The development table sets out the criteria to allow the assessment
16 track for a development application for a development proposal to
17 be worked out.
- 18 (2) If a development proposal is in an assessment track, the proposal
19 must be assessed in that assessment track unless—
- 20 (a) the Minister makes a declaration under section 123 (Minister
21 may declare impact track applicable) in relation to the
22 proposal; or
- 23 (b) section 124 (Declaration by Public Health Act Minister affects
24 assessment track) applies the impact track to the development.

- 1 **114 Application of inconsistent relevant code requirements**
- 2 (1) This section applies in relation to an application for development
- 3 approval for a development proposal if—
- 4 (a) 2 or more codes apply to the proposal; and
- 5 (b) the relevant code requirements for the proposal are
- 6 inconsistent.
- 7 (2) If the relevant code requirements of a precinct code and either a
- 8 development code or a general code are inconsistent, the relevant
- 9 code requirements of the precinct code apply to the development
- 10 proposal and not the relevant code requirements of the development
- 11 code or general code, to the extent of the inconsistency.
- 12 (3) If the relevant code requirements of a development code and a
- 13 general code are inconsistent, the relevant code requirements of the
- 14 development code apply to the development proposal and not the
- 15 relevant code requirements of the general code, to the extent of the
- 16 inconsistency.
- 17 (4) If the relevant code requirements of 2 or more precinct codes,
- 18 development codes or general codes are inconsistent, the relevant
- 19 code requirements of the more recent code apply to the development
- 20 approval and not the relevant code requirements of the earlier code,
- 21 to the extent of the inconsistency.
- 22 (5) To remove any doubt, a relevant code requirement is not
- 23 inconsistent with the code requirements of another code only
- 24 because one code deals with a matter and the other does not.

1 **Division 7.2.2 Code track**

2 **115 Code track—when development approval must be given**

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

- 5 (a) the proposal is in the code track; and
6 (b) the proposal complies with the relevant code requirements.

7 *Note 1 Code requirements*—see s 54.

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

9 **116 Code track—notification, right of review, governmental
10 consultation and reconsideration**

11 To remove any doubt—

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

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

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

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

1 **117 Code track—time for decision on application**

2 A development application for a development proposal in the code
3 track must be decided under section 158 (Deciding development
4 applications) not later than 20 working days after the day the
5 application is made to the planning and land authority.

6 **Division 7.2.3 Merit track**

7 **118 Merit track—when development approval must not be**
8 **given**

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

11 (a) the relevant code; and

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

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

17 *Note 1* An application cannot be approved if it is inconsistent with the territory
18 plan (see s 49) or the National Capital Plan (see *Australian Capital*
19 *Territory (Planning and Land Management) Act 1988* (Cwlth), s 11).

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

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

26 (a) the following have been considered:

27 (i) any applicable guidelines;

- 1 (ii) any realistic alternative to the proposed development, or
2 relevant aspects of it; and
- 3 (b) the decision is consistent with the objects of the territory plan.
- 4 (3) To remove any doubt, if a proposed development will affect a
5 registered tree or declared site—
- 6 (a) the person deciding the development application for the
7 proposed development must not approve the application unless
8 the approval is consistent with the advice of the conservator of
9 flora and fauna in relation to the proposal; and
- 10 (b) subsection (2) does not apply in relation to the conservator's
11 advice.

12 **119 Merit track—considerations when deciding development**
13 **approval**

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

- 16 (a) the objectives for the zone in which the development is
17 proposed to take place;
- 18 (b) the suitability of the land where the development is proposed to
19 take place for a development of the kind proposed;
- 20 (c) each representation received by the authority in relation to the
21 application that has not been withdrawn;
- 22 (d) if an entity gave advice on the application in accordance with
23 section 146 (Requirement to give advice in relation to
24 development applications)—the entity's advice;

25 *Note* Advice on an application is given in accordance with section 146
26 if the advice is given by an entity not later than 15 working days
27 (or shorter prescribed period) after the day the application is
28 given to the entity. If the entity gives no response, the entity is
29 taken to have given advice that supported the application (see
30 s 147).

- 1 (e) if the proposed development relates to land that is public
2 land—the plan of management for the land;
- 3 (f) the probable impact of the proposed development, including
4 the nature, extent and significance of probable environmental
5 impacts.

6 **120 Merit track—notification and right of review**

7 If a development proposal is in the merit track, the application for
8 development approval for the proposal must be publicly notified
9 under division 7.3.4 and there may be a right of review under
10 chapter 13 in relation to a decision on the application.

11 **121 Merit track—time for decision on application**

12 A development application for a development proposal in the merit
13 track must be decided under section 158 (Deciding development
14 applications) not later than—

- 15 (a) if no representation is made in relation to the proposal—
16 30 working days after the day the application is made to the
17 planning and land authority; or
- 18 (b) in any other case—45 working days after the day the
19 application is made to the authority.

20 **Division 7.2.4 Impact track**

21 **122 Impact track applicability**

22 The impact track applies to a development proposal if—

- 23 (a) the relevant development table states that the impact track
24 applies; or
- 25 (b) the proposal is of a kind mentioned in schedule 4; or

- 1 (c) the Minister makes a declaration under section 123 in relation
2 to the proposal; or
- 3 (d) section 124 (Declaration by Public Health Act Minister affects
4 assessment track) or section 131 (Impact track applicable to
5 development proposals not otherwise provided for) provides
6 that the impact track applies to the proposal.

7 **123 Minister may declare impact track applicable**

- 8 (1) The Minister may, in writing, declare that the impact track applies to
9 a development proposal.
- 10 (2) However, the Minister must not make a declaration under
11 subsection (1) in relation to a development proposal unless satisfied
12 on reasonable grounds that there is a risk of significant adverse
13 environmental impact from the development proposed.
- 14 (3) For subsection (2), it does not matter whether the adverse
15 environmental impact from the development is likely to occur on the
16 site of the development or elsewhere.
- 17 (4) For subsection (2)—
- 18 (a) an adverse environmental impact is *significant* if—
- 19 (i) the environmental function, system, value or entity that
20 might be adversely impacted by the development
21 proposed is significant; or
- 22 (ii) the cumulative or incremental effect of the development
23 proposed might contribute to a substantial adverse impact
24 on an environmental function, system, value or entity; and
- 25 (b) in deciding whether an adverse environmental impact is
26 *significant*, the Minister must consider the following:
- 27 (i) the kind, size, frequency, intensity, scope and length of
28 time of the impact;

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

3 *Note* The Minister may publish guidelines about how the Minister will
4 exercise power under this section (see s 412).

5 **124 Declaration by Public Health Act Minister affects**
6 **assessment track**

7 (1) This section applies if—

8 (a) the Minister responsible for the *Public Health Act 1997*,
9 section 134 (Development approvals under Planning and
10 Development Act, s 117) makes a declaration for this section
11 in relation to a development application for a development
12 proposal; and

13 (b) the application is publicly notified; and

14 (c) the declaration is made during the public consultation period
15 for the application.

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

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

19 **125 Declaration etc of impact track after application**

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

22 (a) either—

23 (i) the Minister makes a declaration under section 123 in
24 relation to the proposal; or

25 (ii) section 124 applies in relation to the proposal; and

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

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

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

5 **126 Impact track—development applications**

6 A development application for a development proposal in the impact
7 track must include a completed EIS in relation to the proposal unless
8 the application is exempted by the Minister under section 205.

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

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

11 *Note 3* For when an EIS is completed, see s 203.

12 **127 Impact track—when development approval must not be
13 given**

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

16 (a) either—

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

18 (ii) the Minister has exempted the application under
19 section 205; and

20 (b) the proposal is consistent with—

21 (i) the statement of strategic directions; and

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

- 1 (iii) if the proposed development will affect a registered tree
2 or declared site—the advice of the conservator of flora
3 and fauna in relation to the application.
- 4 *Note 1* An application cannot be approved if it is inconsistent with the territory
5 plan (see s 49) or the National Capital Plan (see *Australian Capital*
6 *Territory (Planning and Land Management) Act 1988* (Cwlth), s 11).
- 7 *Note 2* Requirements for an EIS are dealt with in pt 8.2.
- 8 *Note 3* For when an EIS is completed, see s 203.
- 9 *Note 4* For the term of a scoping document for an EIS, see s 209.
- 10 (2) Also, development approval must not be given for a development
11 proposal in the impact track if approval would be inconsistent with
12 any advice given by an entity to which the application was referred
13 under division 7.3.3 unless the person approving the application is
14 satisfied that—
- 15 (a) the following have been considered:
- 16 (i) any applicable guidelines;
- 17 (ii) all reasonable development options and design solutions;
- 18 (iii) any realistic alternative to the proposed development, or
19 relevant aspects of it; and
- 20 (b) the decision is consistent with the objects of the territory plan.
- 21 (3) To remove any doubt, if a proposed development will affect a
22 registered tree or declared site—
- 23 (a) the person deciding the development application for the
24 proposed development must not approve the application unless
25 the approval is consistent with the advice of the conservator of
26 flora and fauna in relation to the proposal; and
- 27 (b) subsection (2) does not apply in relation to the conservator's
28 advice.
-

1 **128** **Impact track—considerations when deciding**
2 **development approval**

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

- 5 (a) the objectives for the zone in which the development is
6 proposed to take place;
- 7 (b) the relevant code;
- 8 (c) the suitability of the land where the development is proposed to
9 take place for a development of the kind proposed;
- 10 (d) each representation received by the authority in relation to the
11 application that has not been withdrawn;
- 12 (e) if an entity gave advice on the application in accordance with
13 section 146 (Requirement to give advice in relation to
14 development applications)—the entity's advice;

15 *Note* Advice on an application is given in accordance with section 146
16 if the advice is given by an entity not later than 15 working days
17 (or shorter prescribed period) after the day the application is
18 given to the entity. If the entity gives no response, the entity is
19 taken to have given advice that supported the application (see
20 s 147).

- 21 (f) if the proposed development relates to land that is public
22 land—the plan of management for the land;
- 23 (g) the probable impact of the proposed development, including
24 the nature, extent and significance of probable environmental
25 impacts;
- 26 (h) any completed EIS for the proposed development;

27 *Note* For when an EIS is completed, see s 203.

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

1 **129** **Impact track—notification and right of review**

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

7 **130** **Impact track—time for decision on application**

8 A development application in relation to a development proposal in
9 the impact track must be decided under section 158 (Deciding
10 development applications) not later than—

- 11 (a) if no representation is made in relation to the proposal—
12 30 working days after the day the application is made to the
13 planning and land authority; or
14 (b) in any other case—45 working days after the day the
15 application is made to the authority.

16 **Division 7.2.5** **Development proposals not in**
17 **development table and not exempted**

18 **131** **Impact track applicable to development proposals not**
19 **otherwise provided for**

20 (1) In this section:

21 *development proposal* means a development proposal if—

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

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

- 1 (ii) that the proposal is exempt from requiring development
2 approval or is prohibited; and
- 3 (b) the proposal is not exempt from requiring development
4 approval under the relevant development table or by
5 regulation.
- 6 (2) The impact track applies to the development proposal.

7 **Division 7.2.6 Exempt development proposals and**
8 **prohibited developments**

9 **132 Exempt development proposals**

- 10 (1) If a development is exempt from requiring development approval,
11 either under the relevant development table or under
12 subsection (2)—
- 13 (a) the development may be undertaken without a development
14 application and development approval; and
- 15 (b) a person cannot apply for approval of a development proposal
16 for the development.
- 17 *Note* The development proposal may still need a building approval under the
18 *Building Act 2004*.
- 19 (2) A development proposal is exempt from requiring development
20 approval if the development proposed—
- 21 (a) is exempt under the relevant development table (see s 53); or
22 (b) is exempted by regulation.

-
- 1 **133 Development proposals for prohibited development**
- 2 (1) If a development is prohibited, either under the relevant
- 3 development table or under subsection (2), a person cannot apply for
- 4 approval of a development proposal for the development.
- 5 *Note 1* A development is prohibited if any part of the development is prohibited
- 6 (see dict, def *prohibited*).
- 7 *Note 2* It is an offence to undertake prohibited development (see s 194).
- 8 *Note 3* However, if development is authorised by a development approval and
- 9 subsequently becomes prohibited, the development can continue (see
- 10 s 195).
- 11 *Note 4* Also, development that is lawful when it begins continues to be lawful
- 12 (see s 197 and s 198).
- 13 (2) A development proposal by an entity other than the Territory or a
- 14 territory authority in a future urban area is prohibited unless the
- 15 structure plan for the area expressly states otherwise.
- 16 **134 Applications for development approval in relation to use**
- 17 **for otherwise prohibited development**
- 18 (1) This section applies to a development proposal in relation to
- 19 beginning a use of land, or a building or structure on the land, if—
- 20 (a) the use is allowed under the lease; but
- 21 (b) beginning the use is a prohibited development.
- 22 (2) Despite section 133—
- 23 (a) a person may apply to the planning and land authority for
- 24 development approval for the proposal; and
- 25 (b) the proposal is taken not to be prohibited development; and
- 26 (c) the impact track applies to the proposal.

Chapter 7 Development approvals
Part 7.2 Assessment tracks for development applications
Division 7.2.6 Exempt development proposals and prohibited developments

Section 134

- 1 (3) Section 194 (1) to (4) does not apply to a development in
2 accordance with a development approval if the approval is of an
3 application mentioned in subsection (2) (a).

1 **Part 7.3** **Development applications**

2 **Division 7.3.1** **Pre-application advice on**
3 **development proposals**

4 **135** **Consideration of development proposals**

- 5 (1) The planning and land authority may, but need not, consider a
6 development proposal if asked by the proponent of the proposal.

7 **Example of when authority might not consider development proposal**

8 the proposal does not contain enough information to sensibly consider the
9 proposal under this section

10 *Note* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 Legislation Act, s 126 and s 132).

- 13 (2) The planning and land authority must, after considering the
14 development proposal, tell the person, in writing, the following in
15 relation to the proposal:

- 16 (a) which assessment track is likely to apply to the proposal, or if
17 the proposal is likely to be exempt or prohibited;
- 18 (b) whether the application will be referred under division 7.3.3
19 (Referral of development applications);
- 20 (c) whether public notification under division 7.3.4 will be
21 required for the application;
- 22 (d) whether the development proposed is consistent with existing
23 lease conditions applying to the land where the development is
24 proposed to take place;
- 25 (e) generally, what further information may be required.

- 1 (3) The planning and land authority's advice on a proposed
2 development application after consideration is intended to guide and
3 assist the applicant in making the development application.
- 4 (4) However, the planning and land authority may act inconsistently
5 with advice under this section in relation to a development proposal
6 if—
- 7 (a) the environmental circumstances surrounding the development
8 proposal change; or
- 9 (b) the development proposal for which development approval is
10 sought is different from the proposal in relation to which the
11 advice was given; or
- 12 (c) when the proponent asked for advice, the request did not
13 include relevant information; or
- 14 (d) the territory plan changes after the advice is given and before
15 the authority acts; or
- 16 (e) the advice given was inconsistent with the territory plan
17 because of an error.
- 18 (5) Advice given under this section expires 6 months after the day it is
19 given.

20 **Division 7.3.2 Requirements for development**
21 **applications**

22 **136 Form of development applications**

- 23 (1) This section applies to an application for development approval.
- 24 (2) The application must—
- 25 (a) be in writing signed by the applicant; and

- 1 (b) if the application is made by someone other than the lessee of
2 the land to which the application relates—also be signed by—
- 3 (i) if the land to which the application relates is subject to a
4 lease—the lessee of the land; or
- 5 (ii) if the land to which the application relates is public land
6 or unleased land—the custodian for the land; or
- 7 (iii) in any other case—the planning and land authority; and
- 8 (c) if the application is for approval of a development in the code
9 track—be accompanied by information or documents
10 addressing the relevant code requirements; and
- 11 (d) if the application is for approval of a development in the merit
12 track—be accompanied by—
- 13 (i) information or documents addressing the relevant code
14 requirements and relevant merit criteria; and
- 15 (ii) an assessment of the possible environmental effects of the
16 development in detail that is sufficient taking into
17 consideration the size and significance of the impact of
18 the development on the environment; and
- 19 (e) if the application is for approval of a development in the
20 impact track—be accompanied by—
- 21 (i) information or documents addressing the relevant code
22 requirements and relevant merit criteria; and
- 23 (ii) the completed EIS for the proposal; and
- 24 (f) if the application is for approval of a variation of a lease—be
25 accompanied by an assessment by an accredited valuer that
26 sets out the amounts of the values represented by V_1 and V_2 in
27 section 270;

- 1 (g) if the application is for approval of a development that is a
2 lease variation to pay out land rent for land—state the greatest
3 of the following amounts:
- 4 (i) the current site value of the land;
- 5 (ii) if the land was purchased at auction—the reserve price of
6 the land at the auction;
- 7 (iii) if the land was granted by direct grant—the value of the
8 land when originally granted; and
- 9 (h) if the application is for approval of a development prescribed
10 by regulation for this paragraph—an assessment prepared
11 using criteria provided by 1 or more of the entities to which the
12 application is required to be referred under division 7.3.3; and
- 13 (i) if the application is for approval of a development that requires
14 construction work to be carried out on land that has previously
15 been developed and is not leased for rural purposes—be
16 accompanied by a survey certificate for the land where the
17 development is to be carried out (unless otherwise prescribed
18 by regulation); and
- 19 (j) if the application is for development to which section 199
20 (Development applications for developments undertaken
21 without approval) applies—be accompanied by a plan of the
22 development prepared by a registered surveyor that sets out the
23 dimensions of the development.
- 24 *Note 1* A development application in the impact track must usually include an
25 EIS (see s 127).
- 26 *Note 2* A development application for a development proposal to which
27 division 7.2.5 applies must include an EIS (see s 119 and div 7.2.4).
- 28 *Note 3* For when an EIS is completed, see s 203.
- 29 (3) A person who signs an application under subsection (2) (b) (i) is
30 taken to be an applicant in relation to the application.

- 1 (4) In this section:
- 2 *current site value*, of a lease, means the market value of the lease on
- 3 the day proposed for pay out of the lease if—
- 4 (a) the lease were offered for sale subject to the existing conditions
- 5 on the lease; and
- 6 (b) the lease had its full term; and
- 7 (c) the rent payable for the lease were nominal rent; and
- 8 (d) the value of the lease were not affected by a proposed variation
- 9 of the lease.
- 10 *market value*, of a lease—see section 226.
- 11 *relevant merit criteria*, for a development proposal, means the merit
- 12 criteria that apply to the development in each relevant code.
- 13 *survey certificate*, for land where development is to be carried out,
- 14 means a certificate prepared by a registered surveyor that shows—
- 15 (a) the boundaries of the land; and
- 16 (b) the location of each building or structure on the land; and
- 17 (c) the existing contours of the land.

18 **137 Effect of approvals in development applications**

- 19 (1) This section applies if—
- 20 (a) a relevant code requirement for a development proposal is that
- 21 an entity approves the development or certifies something in
- 22 relation to the development; and
- 23 (b) the entity approves the development, or certifies something in
- 24 relation to the development, in writing; and
- 25 (c) the development application is approved (by way of a
- 26 development approval).

- 1 (2) The entity must not act inconsistently with the development
2 approval unless—
- 3 (a) further information in relation to the development proposed in
4 the application comes to the entity's attention (other than
5 information mentioned in subsection (3)); and
- 6 (b) the entity did not have the further information when the entity
7 approved the development or certified the thing; and
- 8 (c) the further information is relevant to the approval of, or
9 certification in relation to, the development; and
- 10 (d) the entity would not have approved the development or
11 certified the thing considered if the entity had the further
12 information before deciding the application.
- 13 (3) Subsection (2) (a) does not apply to further information in relation
14 to a development proposed in an application if—
- 15 (a) the information was not required in the development
16 application; and
- 17 (b) the information is required by the entity after the application is
18 approved; and
- 19 (c) the information is consistent in all significant respects with
20 information already provided by the applicant, except that it is
21 more detailed.
- 22 (4) For this section, an entity *acts inconsistently* with a development
23 approval if the entity—
- 24 (a) does not issue or give an approval or other thing required for
25 the development; or

- 1 (b) issues or gives the approval or other thing in a way, or subject
2 to a condition, that prevents the applicant undertaking the
3 development approved.

4 **Example of thing required for development**

5 the entity's agreement to the digging up of a footpath to allow the development

6 *Note* An example is part of the Act, is not exhaustive and may extend, but
7 does not limit, the meaning of the provision in which it appears (see
8 Legislation Act, s 126 and s 132).

- 9 (5) Also for this section, an entity *acts inconsistently* with a
10 development approval if—

11 (a) the approval, or a certificate in writing by the entity in relation
12 to the development, states that an activity to which the
13 approval relates does not require a particular authorisation
14 (however described); and

15 (b) the entity prosecutes someone, or takes other compliance
16 action, in relation to the activity because the activity is carried
17 out without the particular authorisation.

18 **138 Authority may require further information—development**
19 **applications**

20 (1) The planning and land authority may, by written notice, ask an
21 applicant for development approval to give the authority stated
22 further information in relation to a development application.

23 (2) The request must—

24 (a) state the period within which the further information asked for
25 must be provided; and

26 (b) state that the further information must be provided in writing.

27 *Note* A request for further information may affect the time for deciding a
28 development application (see div 7.3.7).

1 (3) The period stated under subsection (2) (a) must be at least
2 20 working days or, if a shorter period is prescribed by regulation,
3 the shorter period.

4 (4) The planning and land authority may, on application before the end
5 of the period stated under subsection (2) (a), extend the period
6 within which the further information must be provided once only,
7 for a period not longer than 20 working days.

8 *Note* The planning and land authority may extend the period within which
9 further information must be provided after the end of the period being
10 extended (see Legislation Act, s 151C (3)).

11 **139 Effect of failure to provide further information—**
12 **development applications**

- 13 (1) This section applies if—
- 14 (a) the planning and land authority has asked for further
15 information under section 138 in relation to an application; and
- 16 (b) the applicant has not provided some or all of the information in
17 accordance with the request.
- 18 (2) The planning and land authority may refuse the application under
19 section 158.

20 **140 Correcting development applications**

- 21 (1) The planning and land authority may, on the authority's own
22 initiative or on application, correct a formal error in a development
23 application.
- 24 (2) However, the planning and land authority must not make a
25 correction if making the correction would adversely affect someone
26 other than the applicant.

- 1 (3) If the planning and land authority does not tell the applicant that the
2 authority refuses to amend a development application by not later
3 than 5 working days after the day the applicant asks for the
4 correction, the authority is taken to have made the correction.
- 5 (4) If the planning and land authority corrects a development
6 application on the authority's own initiative, the authority must give
7 the applicant, or if there is more than 1, each applicant, written
8 notice about the correction.

9 **141 Amending development applications**

- 10 (1) The planning and land authority may, if asked by the applicant,
11 amend a development application.
- 12 (2) However, the planning and land authority must not amend the
13 development application unless satisfied that—
- 14 (a) the development applied for after the amendment will be
15 substantially the same as the development applied for
16 originally; and
- 17 (b) the assessment track for the application will not change if the
18 application is amended.
- 19 (3) The planning and land authority must, not later than 5 working days
20 after the day the applicant asks for the amendment—
- 21 (a) amend the development application; or
22 (b) refuse to amend the development application.
- 23 (4) If the planning and land authority does not tell the applicant that the
24 authority refuses to amend the application within the time given
25 under subsection (3), the authority is taken to have amended the
26 application.

1 **142 Referred development application amended**

- 2 (1) This section applies if—
- 3 (a) a development application has been amended under
- 4 section 141; and
- 5 (b) before it was amended, the application was referred to an entity
- 6 under division 7.3.3.
- 7 (2) The planning and land authority must refer the development
- 8 application to the entity.
- 9 *Note* Section 146 sets out what the entity to which the application is referred
- 10 must do with the application.
- 11 (3) A referral under subsection (2) must include a brief description of
- 12 how the application has been amended since the entity last saw it.
- 13 (4) However, if the planning and land authority is satisfied that the
- 14 proposed amendment of the application does not affect any part of
- 15 the application in relation to which the entity to which the
- 16 application was referred made a comment, the authority need not
- 17 refer the proposed amendment to the entity.

18 **143 Notice of amended development applications**

- 19 (1) This section applies if—
- 20 (a) the planning and land authority amends a development
- 21 application; and
- 22 (b) the making of the application has been publicly notified.
- 23 (2) The planning and land authority must publicly notify the amended
- 24 application under division 7.3.4 (Public notification of development
- 25 applications and representations).

- 1 (3) However, the planning and land authority may waive the
2 requirement to publicly notify the amended application for
3 development approval if satisfied that—
- 4 (a) no-one other than the applicant will be adversely affected by
5 the amendment; and
- 6 (b) the environmental impact caused by the approval of the
7 amendment will do no more than minimally increase the
8 environmental impact of the development.

9 **144 Withdrawal of development applications**

10 An applicant may withdraw a development application at any time
11 before the application is approved.

12 **Division 7.3.3 Referral of development applications**

13 **145 Some development applications to be referred**

- 14 (1) The planning and land authority must refer a development
15 application prescribed by regulation to an entity prescribed by
16 regulation.
- 17 (2) However, the planning and land authority must not refer a
18 development application to an entity under subsection (1) if—
- 19 (a) the authority is satisfied that the applicant has adequately
20 consulted the entity in relation to the application not earlier
21 than 6 months before the day the application is made; and
- 22 (b) the entity agrees in writing to the proposed development.
- 23 (3) A written agreement to a proposed development mentioned in
24 subsection (2) (b) is taken to be advice received in accordance with
25 section 146 in relation to an application for development approval
26 for the development.

- 1 (4) To remove any doubt, if the planning and land authority is not
2 required to refer a development application to an entity under
3 subsection (1)—
- 4 (a) the authority need not refer the application to the entity before
5 deciding the application; and
- 6 (b) the decision of the authority is not affected by the authority not
7 referring the application to the entity.

8 **146 Requirement to give advice in relation to development**
9 **applications**

- 10 (1) This section applies if a development application, including an
11 amended application, is referred to an entity.

12 *Note* An amended application may be required to be referred to an entity
13 under s 142.

- 14 (2) The entity must give the planning and land authority the entity's
15 advice in relation to the development application not later than
16 15 working days after the day the authority gives the application to
17 the entity or, if a shorter period is prescribed by regulation, not later
18 than the end of the shorter period.

19 *Note 1* A written agreement to a development proposal under
20 section 145 (2) (b) is taken to be advice given in accordance with this
21 section in relation to a development application for the proposal (see
22 s 145 (3)).

23 *Note 2* For how documents may be given, see the Legislation Act, pt 19.5.

24 **147 Effect of no response by referral entity**

25 For this Act, if an entity fails to provide advice in accordance with
26 section 146 in relation to a development application referred to the
27 entity, the entity is taken to have given advice that the entity
28 supports the application.

1 **148 Effect of advice by referral entity**

- 2 (1) This section applies if—
- 3 (a) a development application, including a development
4 application amended under section 141, is referred to an entity;
5 and
- 6 (b) the entity gives advice on the application in accordance with
7 section 146; and
- 8 *Note* Advice on an application is given in accordance with section 146
9 if the advice is given by an entity not later than 15 working days
10 (or shorter prescribed period) after the day the application is
11 given to the entity.
- 12 (c) the planning and land authority or Minister approves the
13 application; and
- 14 (d) the approval is substantially consistent with the advice.
- 15 (2) The entity must not act inconsistently with the advice in relation to
16 the development application unless—
- 17 (a) further information in relation to the development proposed in
18 the application comes to the entity’s attention (other than
19 information mentioned in subsection (3)); and
- 20 (b) the entity did not have the further information when the entity
21 gave the advice; and
- 22 (c) the further information is relevant to the advice the entity gave;
23 and
- 24 (d) the entity would have given different advice if the entity had
25 the further information before giving the advice.
- 26 (3) Subsection (2) (a) does not apply to further information in relation
27 to a development proposed in an application if the information—
- 28 (a) was not required in the development application; and

- 1 (b) is required by the entity after the application is approved; and
2 (c) is consistent in all significant respects with information already
3 provided by the applicant, except that it is more detailed.
- 4 (4) For this section, an entity *acts inconsistently* with advice in relation
5 to a development application if—
- 6 (a) the advice is that the entity will issue or give an approval or
7 other thing in relation to the development; and
8 (b) the application is approved; and
9 (c) the entity—
- 10 (i) does not issue or give the approval or other thing
11 consistent with the advice; or
12 (ii) issues or gives the approval or other thing in a way, or
13 subject to a condition, that prevents the applicant
14 undertaking the development approved.
- 15 **Example of advice**
16 that the entity will agree to the digging up of a footpath to allow the development
- 17 *Note* An example is part of the Act, is not exhaustive and may extend, but
18 does not limit, the meaning of the provision in which it appears (see
19 Legislation Act, s 126 and s 132).
- 20 (5) Also for this section, an entity *acts inconsistently* with advice in
21 relation to an application if—
- 22 (a) the advice is that an activity to which the application relates
23 does not require a particular authorisation (however described);
24 and

- 1 (b) the entity prosecutes someone, or takes other compliance
2 action, in relation to the activity because the activity is carried
3 out without the particular authorisation.

4 **Example of acting inconsistently**

5 An Act prohibits activity A without an approval. The entity responsible for
6 administering the Act gives advice under section 146 that the activity (activity B)
7 in the application does not fall within the description of activity A. The
8 application is approved consistent with the advice. The entity cannot prosecute a
9 person for carrying out activity B in accordance with the approved application
10 because activity B does fall within the description of activity A and the person did
11 not have approval.

- 12 (6) For this section, an entity acts inconsistently with advice that the
13 entity is taken under section 147 to have given in relation to a
14 development application if the entity—

15 (a) refuses to do something required to be done by the entity to
16 allow the applicant to undertake the development approved in
17 the application; or

18 (b) does something in a way, or subject to a condition, that
19 prevents the applicant from undertaking the development
20 approved in the application.

21 **Division 7.3.4 Public notification of development**
22 **applications and representations**

23 **149 What is *publicly notifies* for ch 7?**

24 For this chapter, the planning and land authority *publicly notifies* a
25 development application if—

26 (a) for an application for a development proposal in the merit track
27 other than a proposal to which paragraph (b) applies—the
28 authority notifies the application under—

29 (i) section 150; and

- 1 (ii) if the development proposal is, or includes, a lease
2 variation—section 151; or
- 3 (b) for an application for a development proposal in the impact
4 track or an application for a development proposal in the merit
5 track that is prescribed by regulation for this paragraph—the
6 authority notifies the application under—
- 7 (i) section 150 and section 152; and
- 8 (ii) if the development proposal is, or includes, a lease
9 variation—section 151; or
- 10 *Note 1* Only developments to which the merit track and impact track applies
11 are required to be publicly notified (see s 120 and s 129). Also, the
12 planning and land authority must re-notify some amended development
13 applications (see s 143).
- 14 *Note 2* A person other than an applicant may apply for review of a decision to
15 approve a development application in the merit track only if the
16 application is required to be notified under section 152 (see sch 1,
17 item 4).

18 **150 Public notice to adjoining premises**

- 19 (1) This section applies in relation to a development application if—
- 20 (a) the planning and land authority must notify the application
21 under this section; and
- 22 (b) a place (the *adjoining place*) other than unleased land adjoins
23 the place (the *developing place*) to which the application
24 relates.
- 25 (2) If the adjoining place is occupied, the planning and land authority
26 must give written notice of the making of the development
27 application to the registered proprietor of the lease of the adjoining
28 place at the adjoining place.
- 29 *Note* For how documents may be given, see the Legislation Act, pt 19.5.

- 1 (3) If the adjoining place is unoccupied, the planning and land authority
2 must give written notice of the making of the development
3 application to the lessee of the adjoining place at the lessee's
4 last-known address.
- 5 (4) However, the planning and land authority need not give public
6 notice under subsection (2) or (3)—
- 7 (a) if, in the authority's opinion, it would be impractical to give
8 notice by post to the lessee of each adjoining place because of
9 the number of adjoining places; or
- 10 (b) in relation to an adjoining place that is leased by the applicant
11 or a person for whom the applicant has been appointed to act as
12 agent.
- 13 *Note* This section is subject to s 404 and s 405.
- 14 (5) The validity of a development approval is not affected by a failure
15 by the planning and land authority to comply with this section.
- 16 (6) In this section:
- 17 *adjoins*—a place *adjoins* another place if the place touches the other
18 place, or is separated from the other place only by a road, reserve,
19 river, watercourse or similar division.
- 20 *registered proprietor*—see section 226.

21 **151 Public notice to registered interest-holders**

- 22 (1) This section applies in relation to a development application if—
- 23 (a) the planning and land authority must notify the application
24 under this section because it is, or includes, a lease variation;
25 and
- 26 (b) a person other than the applicant has a registered interest in the
27 land comprised in the lease to be varied.

- 1 (2) The planning and land authority must give written notice of the
2 making of the development application to each person, other than
3 the applicant, with a registered interest in the land comprised in the
4 lease.

5 **152 Major public notification**

- 6 (1) If the planning and land authority must notify a development
7 application under this section, the authority must do each of the
8 following:

- 9 (a) display a sign on the place to which the application relates that
10 states the development proposed to be undertaken;
11 (b) publish notice of the making of the application in a daily
12 newspaper.

13 *Note* This section is subject to s 404 and s 405.

- 14 (2) A person commits an offence if—

- 15 (a) a sign is displayed under subsection (1) (a); and
16 (b) the person moves, alters, damages, defaces, covers or prevents
17 access to the sign while it is required to be displayed.

18 Maximum penalty: 5 penalty units.

- 19 (3) An offence against subsection (2) is a strict liability offence.
20 (4) Subsection (2) does not apply to a person if the person acts with the
21 written approval of the chief planning executive.
22 (5) The validity of a development approval is not affected by a failure
23 by the planning and land authority to comply with this section.

-
- 1 **153 Representations about development applications**
- 2 (1) Anyone may make a representation about a development application
- 3 that has been publicly notified under this Act.
- 4 *Note* Only developments in the merit track and impact track are required to
- 5 be publicly notified (see s 120 and s 129). Also, the planning and land
- 6 authority must re-notify some amended development applications (see
- 7 s 143).
- 8 (2) A representation about a development application must be made
- 9 during the public consultation period for the application.
- 10 (3) The planning and land authority may, by notice published in a daily
- 11 newspaper, extend the public consultation period.
- 12 *Note* The planning and land authority may extend the public consultation
- 13 period after it has ended (see Legislation Act, s 151C).
- 14 (4) A person who makes a representation about a development
- 15 application may, in writing, withdraw the representation at any time
- 16 before the application is decided.
- 17 (5) To remove any doubt, a representation about a development
- 18 application—
- 19 (a) may relate to how the development proposed in the application
- 20 meets, or does not meet, any finding or recommendation of the
- 21 EIS for the development; and
- 22 (b) must not relate to the adequacy of the EIS for the development.
- 23 *Note* Representations about a draft EIS may be made under s 212.
- 24 (6) In this section:
- 25 ***public consultation period*** means—
- 26 (a) the period prescribed by regulation for this section; or
- 27 (b) if the period prescribed is extended under subsection (3), the
- 28 prescribed period as extended.

1 **Division 7.3.5 Ministerial call-in power for**
2 **development applications**

3 **154 Direction that development applications be referred to**
4 **Minister**

5 (1) The Minister may, in writing, direct the planning and land authority
6 to refer to the Minister a development application that has not been
7 decided by the authority.

8 *Note 1* Section 12 provides that the planning and land authority must comply
9 with directions given to it under this Act or a territory law.

10 *Note 2* The power to make a statutory instrument (like the Minister's direction)
11 about a matter includes the power to make the instrument for a
12 particular class of matters (see Legislation Act, s 48 (2)).

13 (2) The planning and land authority must give a copy of the Minister's
14 direction in relation to a development application to each entity to
15 whom the application—

16 (a) is required to be referred, or has been referred, under
17 section 145; and

18 (b) would be required to be referred under section 145 but for
19 section 145 (2).

20 (3) If the Minister gives a direction under subsection (1) in relation to
21 an application, the planning and land authority must take no further
22 action that would lead to a decision by the authority on the
23 application.

24 (4) When complying with the direction under subsection (1), the
25 planning and land authority must also give the Minister—

26 (a) the information and documents received by the authority in
27 relation to the application, including any advice given to the
28 authority under division 7.3.3 (Referral of development
29 applications); and

1 (b) any other relevant information and documents held by the
2 authority.

3 **155 Minister may decide to consider development**
4 **applications**

5 (1) This section applies in relation to an application referred to the
6 Minister under section 154.

7 (2) The Minister may decide to consider the application if, in the
8 Minister's opinion—

9 (a) the application raises a major policy issue; or

10 (b) the application seeks approval for a development that may
11 have a substantial effect on the achievement or development of
12 the object of the territory plan as set out in the statement of
13 strategic directions and objectives for each zone to which the
14 application relates; or

15 (c) the approval or refusal of the application would provide a
16 substantial public benefit.

17 (3) If the Minister is satisfied that the Minister should not consider the
18 application, the Minister must refer the application back to the
19 planning and land authority for decision.

20 **156 Minister decides to consider referred development**
21 **applications**

22 (1) This section applies if the Minister decides under section 155 to
23 consider an application referred to the Minister.

24 (2) The Minister must—

25 (a) tell the planning and land authority about the decision to
26 consider the application; and

27 (b) tell the applicant in writing about the decision and the grounds
28 on which the decision was made; and

1 (c) ensure that the Minister has the comments of the authority on
2 the application; and

3 (d) approve or refuse the application under section 158 (Deciding
4 development applications).

5 (3) A notice under subsection (2) (a) is a notifiable instrument.

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

7 (4) A notice under subsection (2) (a) must be notified under the
8 Legislation Act not later than 15 working days after the day it is
9 given.

10 **157 After Minister decides referred development applications**

11 (1) This section applies if the Minister decides an application under
12 section 158.

13 (2) Not later than 3 sitting days after the day the Minister decides the
14 application, the Minister must present to the Legislative Assembly a
15 statement containing—

16 (a) a description of the development to which the application
17 relates; and

18 (b) details of the land where the development is proposed to take
19 place; and

20 (c) the applicant's name; and

21 (d) details of the Minister's decision; and

22 (e) the grounds for the decision.

1 **Division 7.3.6 Deciding development applications**

2 **158 Deciding development applications**

3 (1) The planning and land authority or, for a development application
4 that the Minister decides to consider under division 7.3.5
5 (Ministerial call-in power for development applications), the
6 Minister, must—

7 (a) approve a development application; or

8 (b) approve a development application subject to a condition; or

9 (c) refuse a development application.

10 *Note 1* For provisions about conditions, see s 160. Also, a development
11 application to vary a lease granted as a concessional lease by surrender
12 and regrant of the lease as a market value lease is subject to a condition
13 (see s 254).

14 *Note 2* Notice of a decision under s (1) must be given under div 7.3.8.

15 *Note 3* If a development application has been referred to an entity under
16 division 7.3.3, the notice of the decision under this section must include
17 information about any comment by the referral entity and whether the
18 authority has followed the entity's advice (see s 167).

19 *Note 4* The criteria for a decision on an application to vary a lease granted as a
20 concessional lease are in div 9.4.2.

21 *Note 5* An applicant and, in some cases, other people may have a right to apply
22 for review of a decision under s (1) (see ch 13 and sch 1). However, the
23 right to apply for legal review of a decision by the Minister is time-
24 limited (see s 403).

25 (2) The planning and land authority or Minister must take action under
26 subsection (1) in relation to a development application not later than
27 the end of the prescribed time period for the application.

- 1 (3) If the planning and land authority approves a development
2 application that relates to a registered tree, the authority may, under
3 this section—
- 4 (a) if a tree management plan is already in force for the tree—
5 approve an amendment of, or replacement for, the tree
6 management plan; or
- 7 (b) in any other case—approve a tree management plan for the
8 tree.
- 9 (4) In this section:
- 10 *prescribed time period*, for a development application, means—
- 11 (a) the period set out in part 7.2 (Assessment tracks for
12 development applications) for deciding an application for a
13 development proposal in the assessment track that applies to
14 the proposal; or
- 15 (b) if the period mentioned in paragraph (a) is extended under
16 division 7.3.7—the period mentioned in paragraph (a) plus
17 each extension that applies to the application under
18 division 7.3.7.
- 19 *Note* The time for deciding a development application is 20 working days for
20 a proposal in the code track (see s 117), 30 or 45 working days for a
21 proposal in the merit track (see s 121) or different periods for a proposal
22 in the impact track (see s 130).

23 **159 Power to approve etc development applications deemed**
24 **refused**

- 25 (1) This section applies if—
- 26 (a) a development application has been made; and
- 27 (b) the time for deciding the application has ended; and
- 28 (c) neither the planning and land authority nor the Minister has
29 decided the application under section 158.

1 (2) The planning and land or, if the Minister has decided to consider the
2 application under division 7.3.5, the Minister, may approve the
3 application, or approve the application subject to a condition, under
4 section 158 despite the ending of the time for deciding the
5 application.

6 (3) To remove any doubt, if neither the planning and land authority nor
7 the Minister has decided an application under section 158, the
8 authority is taken to have decided to refuse the application under the
9 *Administrative Appeals Tribunal Act 1989*, section 24 (6).

10 *Note* A decision of the AAT on review is taken to have been a decision of the
11 original decision-maker, so the planning and land authority or Minister
12 will not be able to approve an application if the AAT has decided an
13 application for review of the deemed refusal (see *Administrative*
14 *Appeals Tribunal Act 1989*, s 44 (11)).

15 **160 Conditional approvals**

16 (1) This section applies in relation to the conditions subject to which the
17 planning and land authority, or the Minister, may approve a
18 development application under section 158 (1) (b).

19 (2) The approval under section 158 (1) (b)—

20 (a) must include any condition that is required to be included by
21 the territory plan; and

22 (b) must not include a condition inconsistent with a condition
23 required to be included by the territory plan.

24 (3) Following are examples of the conditions subject to which a
25 development approval in relation to land may be approved, other
26 than an approval for a code track proposal:

27 (a) that a development, or a stated stage of a development, is to be
28 carried out to the satisfaction of a stated entity;

29 (b) requiring a development to be carried out in stages within the
30 periods stated in or under the approval;

- 1 (c) stating a period in which a development or any stage of a
2 development is to be carried out;
- 3 (d) that the approval does not take effect unless a stated approval
4 is revoked, amended or given;
- 5 (e) that a lease relating to the land be varied and the variation
6 registered under the *Land Titles Act 1925*;
- 7 (f) requiring an existing licence to be varied;
- 8 (g) that another approval relating to the land be surrendered;
- 9 (h) that stated things be done to prevent or minimise adverse
10 environmental impacts;
- 11 (i) if the approval relates to a use of land, or a building or
12 structure on the land—that the land, or buildings or structures
13 on the land, may only be used for the use in stated
14 circumstances;
- 15 (j) in relation to an approval to carry out a development for a
16 stated period—
- 17 (i) that building works or other works carried out in or on a
18 place the subject of the approval are to be removed at the
19 end of the period; or
- 20 (ii) that the place where the development is to take place is to
21 be restored to a particular state at the end of the period;
- 22 (k) that a bond be entered into securing performance against the
23 conditions of the approval;
- 24 (l) if the approval is in relation to a place registered, or nominated
25 for provisional registration, under the *Heritage Act 2004*—that
26 the applicant enter into a heritage agreement under that Act for
27 the conservation of the heritage significance of the place;
- 28 (m) that a development be carried out to a stated standard;

- 1 (n) that stated works, services or facilities that the relevant
2 authority considers reasonable in the circumstances—
- 3 (i) be provided by the applicant on or to a place the subject
4 of the approval, or on or to another place; or
- 5 (ii) be paid for completely or partly by the applicant; or
- 6 (iii) be provided on or to a place the subject of the approval by
7 agreement between the applicant and the Minister
8 responsible for the provision of the works, services or
9 facilities;
- 10 (o) that plans, drawings, specifications or other documents be
11 prepared by the applicant and lodged with the planning and
12 land authority for approval before the development or a stated
13 part of it starts;
- 14 (p) requiring changes to be made to any plan, drawing,
15 specification or other document forming part of the application
16 for approval.
- 17 *Note* An example is part of the Act, is not exhaustive and may extend, but
18 does not limit, the meaning of the provision in which it appears (see
19 Legislation Act, s 126 and s 132).
- 20 (4) A code track proposal must not be approved subject to a condition
21 unless the condition is prescribed by regulation for this subsection.
- 22 (5) The planning and land authority may approve an amendment to a
23 plan, drawing or other document approved under subsection (3) (o)
24 if the amendment—
- 25 (a) if made, would not make the approval inconsistent with
26 section 174 (When development approval takes effect—
27 activity not allowed by lease); and
- 28 (b) is not inconsistent with an approval under subsection (3) (o).

1 **Division 7.3.7 Extensions of time for deciding**
2 **development applications**

3 **161 Extension of time for further information—further**
4 **information sufficient**

- 5 (1) This section applies to a development application if—
- 6 (a) the planning and land authority gives the applicant a notice (a
7 *request notice*) under section 138 asking for further
8 information in relation to the application; and
- 9 (b) the request notice is given to the applicant not later than
10 10 working days after the day the application is lodged; and
- 11 (c) the authority has not asked for further information by request
12 notice in relation to the application before; and
- 13 (d) the applicant gives the authority the information required by
14 the request notice before the end of the period stated in the
15 notice, or any extension of the period under section 138 (4).
- 16 (2) The time for deciding the development application under
17 section 158 is extended by a period—
- 18 (a) starting on the day after the day the planning and land authority
19 gives the applicant the request notice; and
- 20 (b) ending on the day the applicant gives the authority the
21 information required by the request notice.

22 **162 Extension of time for further information—further**
23 **information insufficient**

- 24 (1) This section applies to a development application if—
- 25 (a) the planning and land authority gives the applicant a notice
26 (a *request notice*) under section 138 asking for further
27 information in relation to the application; and

- 1 (b) the request notice is given to the applicant not later than
2 10 working days after the day the application is lodged; and
- 3 (c) the authority has not asked for further information by request
4 notice in relation to the application before; and
- 5 (d) the applicant gives the authority information relating to the
6 request notice before the end of the period stated in the request
7 notice, or any extension of the period under section 138 (4);
8 and
- 9 (e) the authority decides that the information given in relation to
10 the request notice is insufficient and gives the applicant written
11 notice (the *insufficiency notice*) of the decision.
- 12 (2) The time for deciding the development application under
13 section 158 is extended by a period—
- 14 (a) starting on the day after the day the planning and land authority
15 gives the applicant the request notice; and
- 16 (b) ending 20 working days after the day the applicant receives the
17 insufficiency notice.

18 **163 Extension of time for further information—no further**
19 **information given**

- 20 (1) This section applies to a development application if—
- 21 (a) the planning and land authority gives the applicant a notice
22 (a *request notice*) under section 138 asking for further
23 information in relation to the application; and
- 24 (b) the request notice is given to the applicant not later than
25 10 working days after the day the application is lodged; and
- 26 (c) the authority has not asked for further information by request
27 notice in relation to the application before; and

- 1 (d) the applicant does not give the authority the information asked
2 for by the request notice before the end of the period stated in
3 the request notice, or any extension of the period under
4 section 138 (4).
- 5 (2) The time for deciding the development application under
6 section 158 is extended by—
- 7 (a) a period of the same length as the period for giving further
8 information stated in the request notice; or
- 9 (b) if the period for giving further information stated in the request
10 notice has been extended under section 138 (4)—a period the
11 same length as the period stated in the request notice as
12 extended under section 138 (4).

13 **164 Extension of time—application amended**

- 14 (1) This section applies in relation to a development application if the
15 application is amended under section 141.
- 16 (2) The time for deciding the development application under
17 section 158 is extended by the period—
- 18 (a) starting on the day the application is made; and
- 19 (b) ending on the later of the following days:
- 20 (i) the day the application is amended under section 141;
- 21 (ii) if the amended application must be publicly notified
22 under division 7.3.4 (see s 143 (1) (b))—the day after the
23 public consultation period for the application ends.
- 24 (3) In this section:
- 25 *public consultation period*—see section 153 (5).

- 1 (d) if the approval is subject to conditions—set out the conditions
2 the approval is subject to; and

3 *Note* For approvals subject to conditions, see s 160.

- 4 (e) state the place where, and times when, a copy of the
5 application and the approval may be inspected.

6 *Note* If the notice is given to a person who may apply to the AAT for review
7 of the decision to which it relates, the notice must comply with the
8 requirements of the code of practice in force under the Administrative
9 Appeals Tribunal Act 1989, s 25B (1) (see s 401 (3)).

10 **166 Notice of refusal of application**

- 11 (1) If a development application is refused under section 158 (1) (c)
12 (Deciding development applications), the planning and land
13 authority must give written notice of the refusal to—

14 (a) the applicant; and

15 (b) each person who made a representation under section 153
16 about the application.

- 17 (2) However, to remove any doubt, the planning and land authority
18 need not give notice of a decision deemed under the *Administrative*
19 *Appeals Tribunal Act 1989*, section 24 (6) to have been made to
20 refuse a development application.

- 21 (3) A notice under subsection (1) must set out the reasons for the
22 decision.

23 *Note* If the notice is given to a person who may apply to the AAT for review
24 of the decision to which it relates, the notice must comply with the
25 requirements of the code of practice in force under the Administrative
26 Appeals Tribunal Act 1989, s 25B (1) (see s 401 (3)).

- 1 **167** **Notice of decision on referred development application**
- 2 (1) This section applies in relation to a development application if—
- 3 (a) the application is referred to an entity under section 145; and
- 4 (b) the entity gives the planning and land authority advice in
- 5 relation to the application; and
- 6 (c) the authority decides the application under section 158
- 7 (Deciding development applications).
- 8 (2) Notice of the decision under section 165 or section 166 must include
- 9 a statement about—
- 10 (a) whether the planning and land authority followed the advice of
- 11 the entity when making the decision; and
- 12 (b) if the authority did not follow the advice of the entity—why
- 13 the authority did not follow the advice of the entity.
- 14 (3) However, the planning and land authority need not comply with
- 15 subsection (2) in relation to an entity’s advice on a development
- 16 application if satisfied on reasonable grounds that the advice is not
- 17 relevant to the application.
- 18 **168** **Notice if representation by 2 or more people**
- 19 (1) This section applies if—
- 20 (a) a decision has been made under section 158 in relation to a
- 21 development application; and
- 22 (b) a representation has been made under section 153 about the
- 23 application; and
- 24 (c) 2 or more people made the representation.

- 1 (2) The planning and land authority is taken to have complied with
2 section 165 (1) (d) or section 166 (1) (b) in relation to the
3 representation if the authority gives notice—
4 (a) if 1 person has been nominated as the person to whom notice
5 of the decision is to be given and the person’s address has been
6 given to the authority—to the nominated person; or
7 (b) in any other case—to 1 of the people who made the
8 representation.

9 **169 Notice of decision to referral entities**

- 10 (1) This section applies if—
11 (a) a decision has been made under section 158 in relation to a
12 development application; and
13 (b) the application was referred to an entity under division 7.3.3.
14 (2) The planning and land authority must give a copy of the decision on
15 the development application to each entity to which the application
16 was referred.

17 **Division 7.3.9 Effect and duration of development**
18 **approvals**

19 **170 When development approvals take effect—no**
20 **representations and no right of review**

- 21 (1) This section applies if—
22 (a) the planning and land authority or Minister approves a
23 development application under section 158; and
24 (b) there are no representations about the application; and
25 (c) there is no right to apply to the AAT for review of the decision
26 other than for the applicant or a person who made a
27 representation; and

- 1 (d) the development does not include an activity not allowed under
2 the lease for the land on which the development is proposed to
3 take place; and
- 4 (e) the approval is not subject to a condition that something must
5 happen before the approval takes effect; and
- 6 (f) no application has been made under division 7.3.10 for
7 reconsideration of the approval.
- 8 (2) The approval of the development application takes effect on the day
9 after the day the application is approved.

10 **171 When development approvals take effect—single**
11 **representation**

- 12 (1) This section applies if—
- 13 (a) the planning and land authority or Minister approves a
14 development application under section 158; and
- 15 (b) a single representation about the application has been made;
16 and
- 17 (c) no application is made to the AAT for review of the decision to
18 approve the application by the end of the period of 20 working
19 days after the day the person who made the representation was
20 told about the decision; and
- 21 (d) the development does not include an activity not allowed under
22 the lease for the land on which the development is proposed to
23 take place; and
- 24 (e) the approval is not subject to a condition that something must
25 happen before the approval takes effect; and
- 26 (f) no application has been made under division 7.3.10 for
27 reconsideration of the approval.

1 (2) The approval of the development application takes effect
2 20 working days after the day notice of the decision to approve the
3 application is given to the person who made the representation.

4 **172 When development approvals take effect—multiple**
5 **representations**

- 6 (1) This section applies if—
- 7 (a) the planning and land authority or Minister approves a
8 development application under section 158; and
 - 9 (b) 2 or more representations about the application have been
10 made; and
 - 11 (c) no application is made to the AAT for review of the decision to
12 approve the application by the end of the period of 20 working
13 days after the final notice of the decision is given; and
 - 14 (d) the approval is not subject to a condition that something must
15 happen before the approval takes effect; and
 - 16 (e) no application has been made under division 7.3.10 for
17 reconsideration of the approval.
- 18 (2) The approval of the development application takes effect
19 20 working days after the final notice of the decision to approve the
20 application is given.
- 21 (3) In this section:
- 22 *final notice*, of a decision to approve a development application,
23 means the day when every person who made a representation on the
24 application has been given notice of the decision.

-
- 1 **173 When development approvals take effect—AAT review**
- 2 (1) This section applies if—
- 3 (a) the planning and land authority or Minister approves a
- 4 development application under section 158; and
- 5 (b) application is made to the AAT for review of the decision to
- 6 approve the application and the tribunal confirms the decision
- 7 (whether completely or partly); and
- 8 (c) the development does not include an activity not allowed under
- 9 the lease for the land on which the development is proposed to
- 10 take place; and
- 11 (d) the approval is not subject to a condition that something must
- 12 happen before the approval takes effect; and
- 13 (e) no application has been made under division 7.3.10 for
- 14 reconsideration of the approval.
- 15 (2) The approval of the development application takes effect on the
- 16 latest of the following days:
- 17 (a) the day the approval would take effect under this division if no
- 18 application had been made to the AAT for review of the
- 19 decision to approve the application;
- 20 (b) the day after the day the approval is confirmed by the AAT
- 21 (whether completely or partly).
- 22 **174 When development approval takes effect—activity not**
- 23 **allowed by lease**
- 24 (1) This section applies if—
- 25 (a) the planning and land authority or Minister approves a
- 26 development application under section 158; and
- 27 (b) the development includes an activity not allowed by a lease of
- 28 the land where the activity is to be carried out; and

- 1 (c) the approval is not subject to a condition that something must
2 happen before the approval takes effect; and
- 3 (d) no application has been made under division 7.3.10 for
4 reconsideration of the approval.
- 5 (2) The approval of the development application takes effect on the
6 latest of the following days:
- 7 (a) the day the approval would take effect under this division if the
8 development did not include an activity not allowed by a lease
9 of the land where the activity is to be carried out;
- 10 (b) the day the variation of the lease to allow the activity takes
11 effect;
- 12 (c) if an application for review has been made in relation to the
13 approval—the day after the day—
- 14 (i) the approval is confirmed by the AAT (whether
15 completely or partly); or
- 16 (ii) the application for review is withdrawn.

17 *Note* A lease variation takes effect on registration (see *Land Titles Act 1925*,
18 s 72A (3)).

19 **175 When development approval takes effect—condition to**
20 **be met**

- 21 (1) This section applies if—
- 22 (a) the planning and land authority or Minister approves a
23 development application under section 158; and
- 24 (b) the development does not include an activity not allowed by a
25 lease of the land where the activity is to be carried out; and
- 26 (c) the approval is subject to a condition that something must
27 happen before the approval takes effect; and

- 1 (d) no application has been made under division 7.3.10 for
2 reconsideration of the approval.
- 3 (2) The approval of the development application takes effect on the
4 latest of the following days:
- 5 (a) the day the approval would take effect under this division if the
6 approval were not subject to a condition that something must
7 happen before the approval takes effect;
- 8 (b) the day the condition is complied with;
- 9 (c) if an application for review has been made in relation to the
10 approval—the day after the day—
- 11 (i) the approval is confirmed by the AAT (whether
12 completely or partly); or
- 13 (ii) the application for review is withdrawn.

14 **176 When development approval takes effect—activity not**
15 **allowed by lease and condition to be met**

- 16 (1) This section applies if—
- 17 (a) the planning and land authority or Minister approves a
18 development application under section 158; and
- 19 (b) the development includes an activity not allowed by a lease of
20 the land where the activity is to be carried out; and
- 21 (c) the approval is subject to a condition that something must
22 happen before the approval takes effect; and
- 23 (d) no application has been made under division 7.3.10 for
24 reconsideration of the approval.

- 1 (2) The approval of the development application takes effect on the
2 latest of the following days:
- 3 (a) the day the approval would take effect under section 174 if the
4 approval were not subject to a condition that something must
5 happen before the approval takes effect;
- 6 (b) the day the approval would take effect under section 175 if the
7 development did not include an activity not allowed by a lease
8 of the land where the activity is to be carried out.
- 9 **177 When development approval takes effect—application for**
10 **reconsideration**
- 11 (1) This section applies if—
- 12 (a) the planning and land authority or Minister approves (the
13 *original decision*) a development application under
14 section 158; and
- 15 (b) application is made for reconsideration under section 185 of
16 the decision to approve the development application; and
- 17 (c) no application is made to the AAT for review of the original
18 decision within the time allowed; and
- 19 (d) the original decision is confirmed on reconsideration under
20 division 7.3.10.
- 21 (2) The approval of the development application takes effect on the
22 latest of the following days:
- 23 (a) the day the approval would take effect under this division if
24 there were no application for reconsideration;
- 25 (b) the day after the day—
- 26 (i) the approval is confirmed under division 7.3.10; or
27 (ii) the application for reconsideration is withdrawn;

- 1 (c) if an application for review is made in relation to the decision
2 to confirm the original decision—the day after the day—
3 (i) the approval is confirmed by the AAT (whether
4 completely or partly); or
5 (ii) the application for review is withdrawn.

6 **178 When development approval takes effect—**
7 **reconsideration and review right**

- 8 (1) This section applies if—
9 (a) the planning and land authority or Minister refuses a
10 development application under section 158, or approves the
11 application subject to a condition; and
12 (b) under division 7.3.10—
13 (i) the authority reconsiders the decision mentioned in
14 paragraph (a) (the *original decision*); and
15 (ii) the authority makes a decision (the *substituted decision*)
16 in substitution for the original decision, other than a
17 decision to refuse the development application; and
18 (c) a person has, or may have, a right to apply to the AAT for
19 review of the substituted decision.
20 (2) The approval of the development takes effect 20 working days after
21 the day the substituted decision is made.

22 **179 End of development approvals other than lease variations**

- 23 (1) This section applies to a development approval other than—
24 (a) a development approval that consists only of a variation of a
25 lease; or
26 (b) a part of a development approval that consists of a variation of
27 a lease; or

- 1 (c) a development approval, or part of a development approval,
2 that relates only to the use of land, or a building or structure on
3 the land, including beginning a new use or a change of use.
- 4 (2) A development approval to which this section applies ends if—
- 5 (a) the development or any stage of the development has not
6 started by the end of the period stated in the approval; or
- 7 (b) the development or any stage of the development has not
8 finished by the end of the period stated in the approval; or
- 9 (c) if no period is stated in the approval for starting the
10 development or any stage of the development—the
11 development or stage of development has not started 2 years
12 after the day the approval takes effect; or
- 13 (d) the approval holder surrenders the approval to the planning and
14 land authority; or
- 15 (e) if no time is stated in the approval for finishing the
16 development—the development is not finished—
- 17 (i) 2 years after the day the development begins; or
- 18 (ii) if an extension of the 2-year period is granted under this
19 section—at the end of the extended period; or
- 20 (f) if the development approval relates to land comprised in a
21 lease that requires the development to be completed on a stated
22 date—the date stated in the lease for completion of the
23 development; or
- 24 (g) the approval is revoked under section 183.
- 25 (3) On application made before the end of a prescribed period, the
26 planning and land authority may extend the prescribed period.

- 1 (4) In this section:
2 *prescribed period*, in relation to a development approval, means—
3 (a) the time stated in the approval for finishing the development or
4 a stage of the development; or
5 (b) if no time is stated in the approval for finishing the
6 development—the period ending 2 years after the development
7 begins.

8 **180 End of development approvals for lease variations**

- 9 (1) This section applies to—
10 (a) a development approval that consists only of a variation of a
11 lease; or
12 (b) a part of a development approval that consists of a variation of
13 a lease.
14 (2) The development approval, or part of the approval, ends—
15 (a) if—
16 (i) the lease is varied in accordance with the approval; or
17 (ii) the lease is terminated; or
18 (iii) the approval is revoked under section 183; or
19 (iv) the approval holder surrenders the approval to the
20 planning and land authority; or
21 (v) the lease expires and no application is made under
22 section 246 for a further lease; or
23 *Note* A person may apply for the grant of a further lease not later
24 than 6 months after the expiry of the affected lease.
25 (vi) the lease is surrendered; or

- 1 (b) at the end of the period of 2 years starting on the day after the
2 day the approval is given.

3 **181 End of development approvals for use under lease**
4 **without lease variation, licence or permit**

- 5 (1) This section applies to a development approval, or part of a
6 development approval, that—

7 (a) relates only to the use of land, or a building or structure on the
8 land, under a lease (the *affected lease*), including beginning a
9 new use or a change of use; and

10 (b) does not involve a lease variation.

- 11 (2) The development approval ends if—

12 (a) the affected lease expires and no application is made under
13 section 246 for a further lease; or

14 *Note* A person may apply for the grant of a further lease not later than
15 6 months after the expiry of the affected lease.

16 (b) the approval is revoked under section 183; or

17 (c) if the approval states a period for the end of the approval—the
18 period ends; or

19 (d) the approval is surrendered; or

20 (e) the affected lease is surrendered (other than under section 246)
21 or terminated.

- 22 (3) If use in accordance with the development approval does not begin
23 or happen before the end of the period of 2 years starting on the day
24 after the day the approval is given, the development approval ends
25 at the end of the 2-year period.

1 (4) To remove any doubt, a development approval relating to use does
2 not end only because 1 or more of the following apply to the
3 development or lease:

4 (a) the use is not continuous;

5 (b) someone deals with the affected lease;

6 (c) a further lease is granted for the affected lease on application
7 under section 246, whether the grant happens immediately
8 after the expiry of the affected lease or otherwise.

9 **Examples of use not being continuous for par (a)**

10 1 the use is interrupted

11 2 the use is intermittent

12 *Note* An example is part of the Act, is not exhaustive and may extend, but
13 does not limit, the meaning of the provision in which it appears (see
14 Legislation Act, s 126 and s 132).

15 (5) The planning and land authority must tell the registrar-general about
16 the ending of a development approval to which this section applies
17 if—

18 (a) the authority gave the registrar-general notice of the approval;
19 and

20 (b) the approval is surrendered to the authority.

21 (6) In this section:

22 *deal* with a lease—see section 226.

23 **182 End of development approvals for use under licence or**
24 **permit**

25 (1) This section applies to a development approval, or part of a
26 development approval, that relates only to the use of land under a
27 licence or permit.

- 1 (2) The development approval ends if—
2 (a) the approval is revoked under section 183; or
3 (b) if the approval states a period for the end of the approval—the
4 period ends; or
5 (c) the approval is surrendered; or
6 (d) the licence or permit ends—
7 (i) whether on expiry or otherwise; and
8 (ii) even if renewed.
- 9 (3) If use in accordance with the development approval does not begin
10 or happen before the end of the period of 2 years starting on the day
11 after the day the approval is given, the development approval ends
12 at the end of the 2-year period.
- 13 (4) To remove any doubt, a development approval relating to use does
14 not end only because the use is not continuous.

15 **Examples of use not being continuous**

- 16 1 the use is interrupted
17 2 the use is intermittent

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

21 **183 Revocation of development approvals**

- 22 (1) The planning and land authority may revoke a development
23 approval—
24 (a) if satisfied that the approval was obtained by fraud or
25 misrepresentation; or

1 (b) if the approval is in relation to a place registered, or nominated
2 for provisional registration, under the *Heritage Act 2004*—if
3 the applicant is convicted of an offence against this part or the
4 *Heritage Act 2004*.

5 (2) The planning and land authority must tell the registrar-general about
6 the revocation of the development approval if the authority gave the
7 registrar-general notice of the approval.

8 **Division 7.3.10 Reconsideration of decisions on** 9 **development applications**

10 **184 Definitions—div 7.3.10**

11 In this division:

12 *original application*—see section 185 (1) (a).

13 *original decision*—see section 185 (1) (a).

14 *reconsideration application*—see section 185 (3).

15 **185 Applications for reconsideration**

16 (1) This section applies if—

17 (a) a development application, or an application for amendment of
18 a development approval, (the *original application*) has been
19 approved subject to a condition or refused (the *original*
20 *decision*) by the planning and land authority; and

21 (b) an application has not previously been made under this section
22 for reconsideration of the original decision; and

23 (c) the AAT has not decided an application for review of the
24 original decision.

25 (2) However, this section does not apply in relation to the refusal of a
26 development application, or an application for amendment of a
27 development approval, in the code track.

- 1 (3) The applicant for the original application may apply (the
2 ***reconsideration application***) for reconsideration of the original
3 decision.
- 4 (4) The reconsideration application must—
5 (a) be in writing signed by the applicant; and
6 (b) if the application is made by someone other than the lessee of
7 the land to which the application relates and the land is not
8 unleased—also be signed by the lessee of the land.
- 9 (5) The reconsideration application must be made not later than—
10 (a) 20 working days after the day the applicant is told about the
11 original decision by the planning and land authority; or
12 (b) any longer period allowed by the planning and land authority.
- 13 *Note* The planning and land authority may extend the period after the end of
14 the period being extended (see Legislation Act, s 151C (3)).
- 15 (6) The reconsideration application must set out the grounds on which
16 reconsideration of the original decision is sought.
- 17 *Note* Making an application under this section stays the operation of the
18 decision for which reconsideration is sought.

19 **186 Notice to AAT of reconsideration application**

- 20 (1) This section applies if—
21 (a) a development application, or an application for amendment of
22 a development approval, (the ***original application***) has been
23 approved subject to a condition or refused (the ***original***
24 ***decision***) by the planning and land authority; and
25 (b) a person applies for reconsideration of the original decision;
26 and

- 1 (c) the person also applies to the AAT for review of the original
2 decision, whether before or after applying for reconsideration;
3 and
4 (d) the AAT gives the planning and land authority notice of the
5 application for review.
6 (2) The planning and land authority must tell the AAT in writing about
7 the application for reconsideration.

8 **187 Reconsideration**

- 9 (1) If the planning and land authority receives a reconsideration
10 application, the authority must—
11 (a) reconsider the original decision; and
12 (b) not later than 20 working days after the day the authority
13 receives the application—
14 (i) make any decision in substitution for the original decision
15 that the authority could have made on the original
16 application; or
17 (ii) confirm the original decision.
18 (2) However, the planning and land authority must not take action under
19 subsection (1) (b) if the AAT has decided an application for review
20 of the original decision.
21 (3) The 20 working days mentioned in subsection (1) may be extended
22 for a stated period by agreement between the planning and land
23 authority and the applicant.
24 (4) In reconsidering the original decision, the planning and land
25 authority—
26 (a) need not publicly notify the reconsideration application under
27 division 7.3.4; but

- 1 (b) must give written notice of the reconsideration application to
2 anyone who made a representation under section 153 about the
3 original application, allow the person reasonable time (that is
4 not shorter than 2 weeks) to make a representation on the
5 reconsideration application, and consider any representation
6 made within the time allowed.
- 7 (5) Also, in reconsidering the original decision, the planning and land
8 authority—
- 9 (a) must consider any information available to the authority when
10 it made the original decision and information given in the
11 reconsideration application; and
- 12 (b) may consider any other relevant information.
- 13 **Example of other relevant information**
14 information from representations
- 15 *Note* An example is part of the Act, is not exhaustive and may extend, but
16 does not limit, the meaning of the provision in which it appears (see
17 Legislation Act, s 126 and s 132).
- 18 (6) The planning and land authority must ensure that, if the original
19 decision is made on the authority's behalf by a person (the *original*
20 *decision-maker*), the authority or someone other than the original
21 decision-maker reconsiders the decision.

22 **188 No action by authority within time**

23 If the planning and land authority does not make a substitute
24 decision, or confirm the original decision, by the end of the
25 20 working days, or the 20-working day period as extended by
26 agreement, mentioned in section 187, the authority is taken to have
27 confirmed the original decision.

1 **189 Notice of decisions on reconsideration**

2 As soon as practicable after reconsidering the original decision, the
3 planning and land authority must give written notice of the decision
4 on the reconsideration to—

- 5 (a) the applicant; and
6 (b) anyone who was given notice of the reconsideration
7 application under section 187 (4) (b); and
8 (c) if the original decision was an approval subject to conditions
9 and the authority gave the registrar-general notice of the
10 approval—the registrar-general.

11 *Note* If the notice is given to a person who may apply to the AAT for review
12 of the decision to which it relates, the notice must comply with the
13 requirements of the code of practice in force under the Administrative
14 Appeals Tribunal Act 1989, s 25B (1) (see s 401 (3)).

15 **Division 7.3.11 Correction and amendment of**
16 **development approvals**

17 **190 Correcting development approvals**

- 18 (1) The planning and land authority may, on its own initiative or on
19 application, correct a formal error in a development approval.
20 (2) If the planning and land authority corrects a development approval,
21 the authority must give the approval holder, or if there is more than
22 1, each approval holder, written notice about the correction.

23 *Note* **Approval holder**—see dict.

24 **191 Applications to amend development approvals**

- 25 (1) This section applies if—

- 1 (a) the planning and land authority has given development
2 approval for a development proposal (the *original*
3 *development proposal*); and
- 4 (b) the development proposal changes (the *changed development*
5 *proposal*) so that it is not covered by the approval.
- 6 (2) An approval holder may apply to the planning and land authority to
7 amend the development approval so that it approves the changed
8 development proposal.
- 9 (3) An application under subsection (2) must—
- 10 (a) be in writing signed by the applicant; and
- 11 (b) if the application is made by someone other than the lessee of
12 the land to which the application relates, be signed by—
- 13 (i) if the land to which the application relates is subject to a
14 lease—the lessee of the land; or
- 15 (ii) if the land to which the application relates is public land
16 or unleased land—the custodian for the land; or
- 17 (iii) in any other case—the planning and land authority.
- 18 (4) A person who signs an application under subsection (3) (b) (i) is
19 taken to be an applicant in relation to the application.

20 **192 Deciding applications to amend development approvals**

- 21 (1) In deciding whether to amend a development approval in
22 accordance with an application under section 191, the planning and
23 land authority must consider the application, and take action in
24 relation to the application, as if—
- 25 (a) the development originally approved had been completed; and

1 (b) the application for amendment were an application for
2 approval of a development proposal (the *proposed*
3 *development*) to change the completed development to give
4 effect to the amendment.

5 **Example**

6 Philip has development approval (the *original approval*) to build a house. Philip
7 starts to build the house, but discovers that he needs an extra floor in the house.
8 He applies to amend the original approval.

9 In considering whether to amend the original approval, the planning and land
10 authority must treat the application to amend as if the house has been built in
11 accordance with the original approval, and the application is for approval to add
12 an extra floor. This means the authority must assess the application in the
13 assessment track that would apply to an application to add an extra floor, and any
14 requirement to notify agencies or publish the application would have to be
15 followed.

16 *Note 1* An application for amendment of a development application may be
17 reconsidered under pt 7.3.10 (see s 185 (1) (a)) and the approval holder
18 may apply for review of a decision to refuse to amend the approval (see
19 sch 1, item 13).

20 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
21 does not limit, the meaning of the provision in which it appears (see
22 Legislation Act, s 126 and s 132).

23 (2) The planning and land authority must refuse to amend the
24 development approval if satisfied that the changed development
25 proposal and the original development proposal would be in
26 different assessment tracks.

27 (3) Also, the planning and land authority must refuse to amend a
28 development approval unless satisfied that, after the amendment, the
29 development approved will be substantially the same as the
30 development for which approval was originally given.

31 (4) To remove any doubt, if public notification of the proposed
32 development is required under the assessment track that applies to
33 the proposed development, only the application for the amendment
34 need be publicly notified.

1 **Part 7.4** **Developments without approval**

2 **193** **Offence to develop without approval**

- 3 (1) A person commits an offence if—
- 4 (a) the person undertakes development without development
5 approval; and
- 6 (b) the development requires development approval; and
- 7 (c) the person knows that the development requires development
8 approval.

9 Maximum penalty:

- 10 (a) for an individual—2 000 penalty units; or
- 11 (b) for a corporation—2 500 penalty units.

- 12 (2) A person commits an offence if—
- 13 (a) the person undertakes development without development
14 approval; and
- 15 (b) the development requires development approval; and
- 16 (c) the person is reckless about whether the development requires
17 development approval.

18 Maximum penalty: 1 000 penalty units.

- 19 (3) A person commits an offence if—
- 20 (a) the person undertakes development without development
21 approval; and
- 22 (b) the development requires development approval; and

- 1 (c) the person is negligent about whether the development requires
2 development approval.
- 3 Maximum penalty: 500 penalty units.
- 4 (4) A person commits an offence if—
- 5 (a) the person undertakes development without development
6 approval; and
- 7 (b) the development requires development approval.
- 8 Maximum penalty: 60 penalty units.
- 9 (5) An offence against subsection (4) is a strict liability offence.
- 10 (6) It is a defence to a prosecution for an offence against subsection (4)
11 if the defendant proves that the defendant took all reasonable steps
12 to find out whether the development required development approval
13 before undertaking the development.
- 14 (7) To remove any doubt, this section does not apply to development
15 that is lawful because of section 197 or section 198.

16 **194 Offence to undertake prohibited development**

- 17 (1) A person commits an offence if—
- 18 (a) the person undertakes development; and
- 19 (b) the development is prohibited; and
- 20 (c) the person knows that the development is prohibited.
- 21 Maximum penalty:
- 22 (a) for an individual: 2 000 penalty units; or
- 23 (b) for a corporation: 2 500 penalty units.

Section 194

- 1 (2) A person commits an offence if—
- 2 (a) the person undertakes development; and
- 3 (b) the development is prohibited; and
- 4 (c) the person is reckless about whether the development is
- 5 prohibited.
- 6 Maximum penalty: 1 000 penalty units.
- 7 (3) A person commits an offence if—
- 8 (a) the person undertakes development; and
- 9 (b) the development is prohibited; and
- 10 (c) the person is negligent about whether the development is
- 11 prohibited.
- 12 Maximum penalty: 500 penalty units.
- 13 (4) A person commits an offence if—
- 14 (a) the person undertakes development; and
- 15 (b) the development is prohibited.
- 16 Maximum penalty: 60 penalty units.
- 17 *Note* Section 134 and s 195 disapply s (1) to (4) in certain cases.
- 18 (5) An offence against subsection (4) is a strict liability offence.
- 19 (6) To remove any doubt, this section does not apply to development
- 20 that is lawful—
- 21 (a) because of section 195, section 197 or section 198; or
- 22 (b) because it is in accordance with a development approval
- 23 granted on an application mentioned in subsection 134 (2) (a).

- 1 **195** **Development authorised by approval before prohibition**
- 2 (1) This section applies if—
- 3 (a) a person undertakes development; and
- 4 (b) the development is in accordance with a development approval
- 5 given in relation to the development; and
- 6 (c) the development becomes prohibited.
- 7 (2) Section 194 (1) to (4) does not apply to the development if it is
- 8 undertaken in accordance with the development approval, despite
- 9 any other provision of this Act.
- 10 *Note 1* The development may still need building approval, or further building
- 11 approval, under the *Building Act 2004*.
- 12 *Note 2* A reference to an Act includes a reference to the statutory instruments
- 13 made or in force under the Act, including any regulation (see
- 14 Legislation Act, s 104).

- 15 **196** **Offence to develop other than in accordance with**
- 16 **conditions**
- 17 (1) A person commits an offence if—
- 18 (a) the person undertakes development; and
- 19 (b) the person has development approval for the development; and
- 20 (c) the development approval is conditional; and
- 21 (d) the person does not comply with a condition of the
- 22 development approval when undertaking the development.
- 23 Maximum penalty: 60 penalty units.
- 24 (2) An offence against subsection (1) is a strict liability offence.

1 **197 Development other than use lawful when begun**

- 2 (1) This section applies if—
- 3 (a) a development, other than a development that is continuing a
- 4 use, is exempt from requiring development approval under a
- 5 development table or by regulation; and
- 6 (b) a person undertakes, or begins, the development; and
- 7 (c) after the person undertakes, or begins, the development, the
- 8 development stops being exempt.
- 9 (2) The development is lawful despite any other provision of this Act.

10 **198 Use as development lawful when begun**

- 11 (1) This section applies to the continuing use of land, or a building or
- 12 structure on the land, if the use—
- 13 (a) when it began, was exempted from requiring development
- 14 approval in a development table or by regulation; and
- 15 (b) is authorised by—
- 16 (i) a lease (the *affected lease*) for the land; or
- 17 (ii) a licence under this Act; or
- 18 (iii) a permit under the *Roads and Public Places Act 1937*; or
- 19 (iv) section 240; and
- 20 (c) continuing the use stops being exempt.
- 21 (2) Also, this section applies in relation to a use of land, or a building or
- 22 structure on the land, even if 1 or more of the following apply in
- 23 relation to the use:
- 24 (a) the use is not continuous;
- 25 (b) someone deals with the affected lease;

- 1 (c) a further lease is granted for the affected lease on application
2 under section 246, whether the grant happens immediately
3 after the expiry of the affected lease or otherwise.
- 4 (3) However, this section does not apply in relation to the use of land,
5 or a building or structure on the land, if—
- 6 (a) the affected lease is surrendered (other than under section 246)
7 or terminated; or
- 8 (b) if the use is authorised by a licence under this Act or a permit
9 under the *Roads and Public Places Act 1937*—the licence or
10 permit ends—
- 11 (i) whether on expiry or otherwise; and
12 (ii) even if renewed; or
- 13 (c) the affected lease expires and no application is made under
14 section 246 for a further lease.

15 *Note* A person may apply for the grant of a further lease not later than
16 6 months after the expiry of the affected lease (see s 246 (1) (c)).

- 17 (4) The use of the land, or building or structure, is lawful while
18 authorised by a lease for the land, a licence, a permit or section 240,
19 despite any other provision of this Act.
- 20 (5) In this section:
21 *deal* with a lease—see section 226.

22 **199 Development applications for developments undertaken**
23 **without approval**

- 24 (1) This section applies if—
- 25 (a) a development has been undertaken; and
26 (b) development approval was required for the development; and
27 (c) there was no development approval for the development.

- 1 (2) The lessee of the land where the development was undertaken may
2 apply for approval for the development under part 7.3 (Development
3 applications).
- 4 (3) The planning and land authority must treat an application for
5 development approval for the development as if the development
6 had not been undertaken, subject to section 136 (2) (j) (Form of
7 development applications).
- 8 *Note* Development applications (including an application to which this
9 section applies) are decided under s 158.
- 10 (4) To remove any doubt, the making of an application for approval of a
11 development to which this section applies, or the approval of the
12 application, does not affect any proceeding under this part, whether
13 or not the proceeding starts before the making or approval of the
14 application.

1 **Chapter 8** **Environmental impact**
2 **statements and inquiries**

3 *Notes to ch 8*

4 Fees may be determined under s 415 for provisions of this chapter.

5 If a form is approved under s 416 for a provision of this chapter, the form must be
6 used.

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

9 **Part 8.1** **Interpretation—ch 8**

10 **200** **Definitions—ch 8**

11 In this chapter:

12 *draft EIS*—see section 210 (2) (a).

13 *EIS*—see section 202.

14 *environmental impact statement* means an EIS (see s 202).

15 *inquiry* means an inquiry into an EIS established under section 221.

16 *proponent*, for a development proposal, means the person proposing
17 the proposal.

18 *Note* See also s 201.

19 *representation*, about a draft EIS, means a representation made
20 about the draft EIS under section 212.

21 *scoping document*, for a proposal—see section 206 (2) (b).

22 *Note* For when an EIS is completed, see s 203.

1 **201 Proponents**

2 (1) The relevant Minister in relation to a defined decision may, in
3 writing, designate a person or territory authority as the proponent in
4 relation to the decision.

5 (2) In this section:

6 ***defined decision*** means a decision of the Territory, the Executive, a
7 Minister or a territory authority about a proposal in relation to which
8 a Minister is empowered—

9 (a) to direct that an environmental impact statement be prepared;
10 or

11 (b) to establish a panel to conduct an inquiry.

12 ***relevant Minister***, means the Minister responsible for the
13 administration of the Act or subordinate law under which—

14 (a) in relation to a statement or inquiry—the statement or inquiry
15 is authorised to be prepared or conducted; or

16 (b) in relation to a defined decision—the relevant decision is
17 authorised to be made.

1 **Part 8.2** **Environmental impact**
2 **statements**

3 **202** **What is an *EIS*?**

4 An *EIS* is an environmental impact statement prepared as prescribed
5 by regulation.

6 **203** **When is an *EIS* *completed*?**

7 (1) For this Act, an *EIS* is *completed* if—

8 (a) the Minister gives the planning and land authority notice under
9 section 219 (Notice of no action on *EIS* given to Minister) in
10 relation to the *EIS*; or

11 (b) the Minister has not decided under section 221 to establish a
12 panel to conduct an inquiry about the *EIS*; or

13 (c) the Minister has established an inquiry panel in relation to the
14 *EIS* and—

15 (i) the panel has reported the results of the inquiry; or

16 (ii) the time for reporting under section 223 has ended.

17 (2) To remove any doubt, for subsection (1), it does not matter whether
18 or not the Minister intends to present, or has presented, a copy of the
19 *EIS* to the Legislative Assembly under section 220.

1 **204 When is a completed EIS required?**

2 A completed EIS is required in relation to a development proposal if
3 this Act requires a completed environmental impact statement in
4 relation to the proposal, unless the application for development
5 approval for the proposal is exempted under section 205.

6 *Note* A completed EIS is required under s 126. See div 7.2.4 for
7 requirements for applications in the impact track.

8 **205 EIS not required if development application exempted**

9 The Minister may exempt a development application for approval
10 for a proposal from a requirement to include an EIS if satisfied that
11 the expected environmental impact of the proposal has already been
12 sufficiently addressed by another study, whether or not the study
13 relates to the particular proposal.

14 **206 Scoping of EIS**

15 (1) This section applies if the proponent for a development proposal for
16 which a completed EIS is required applies to the planning and land
17 authority under this section.

18 (2) The planning and land authority must—

19 (a) identify the matters that are to be addressed by an EIS in
20 relation to the development proposal; and

21 (b) prepare a written notice (the *scoping document*) of the matters.

22 *Note* The time for giving a scoping document to the applicant is set out in
23 s 208.

24 (3) A regulation may prescribe entities the planning and land authority
25 may or must consult in preparing a scoping document.

1 **207 Contents of scoping document**

2 (1) The matters identified in the scoping document for a development
3 proposal must include any minimum content for scoping documents
4 prescribed by regulation.

5 (2) The planning and land authority may, in the scoping document for a
6 development proposal, require the proponent to engage a consultant
7 to help prepare an EIS for the proposal.

8 (3) In this section:

9 *consultant* means a person on a list of consultants prescribed by
10 regulation.

11 *Note* See also s 417 (Regulation-making power).

12 **208 Time to provide scoping document**

13 (1) This section applies if a person applies under section 206 in relation
14 to a development proposal.

15 (2) The planning and land authority must give the scoping document for
16 the development proposal to the applicant not later than—

17 (a) 30 days after the day the application is made; or

18 (b) if the chief planning executive allows a further period under
19 subsection (3)—the end of the further period allowed.

20 (3) The chief planning executive may, in writing, allow a further period
21 for the planning and land authority to provide a scoping document in
22 relation to a development proposal if satisfied that, because of the
23 complexity of the proposal and the consultation required, the further
24 period is necessary.

25 (4) If the chief planning executive allows a further period under
26 subsection (3) in relation to a development proposal, the chief
27 planning executive must tell the applicant in writing.

1 **209 Term of scoping document**

2 A scoping document is in force for 18 months starting on the day
3 after the day the document is given to the proponent of the
4 development proposal to which the document relates.

5 **210 Preparing draft EIS**

6 (1) This section applies if the planning and land authority gives the
7 proponent of a development proposal a scoping document for the
8 proposal.

9 (2) The proponent must—

10 (a) prepare a document (a *draft EIS*) that addresses each matter
11 raised in the scoping document for the proposal; and

12 (b) give the draft EIS to the planning and land authority for public
13 notification.

14 **211 Public notification of draft EIS**

15 (1) The planning and land authority *publicly notifies* a draft EIS by—

16 (a) putting a notice in a daily newspaper and on the authority
17 website stating—

18 (i) that the draft EIS is available for public inspection and for
19 purchase at stated places and times; and

20 (ii) how and when representations may be made on the draft
21 EIS; and

22 (b) making 1 or more copies of the draft EIS available as stated in
23 the notice; and

24 (c) if practicable, making a copy of the draft EIS available on the
25 authority website.

26 *Note* *Authority website*—see the dictionary.

1 (2) The period (the *public consultation period*) for making
2 representations for subsection (1) (a) (ii) must not be shorter than
3 20 working days.

4 (3) The planning and land authority may, by notice published in a daily
5 newspaper, extend the public consultation period.

6 *Note* The planning and land authority may extend the public consultation
7 period after it has ended (see Legislation Act, s 151C).

8 **212 Representations about draft EIS**

9 (1) Anyone may make a representation about a draft EIS publicly
10 notified under section 211.

11 (2) A representation about a draft EIS must be made during the public
12 consultation period for the draft EIS.

13 (3) A person who makes a representation about a draft EIS may, in
14 writing, withdraw the representation at any time before the planning
15 and land authority accepts the EIS under section 215.

16 (4) In this section:

17 *public consultation period*, for a draft EIS—see section 211 (2).

18 *Note* The public consultation period may be extended under s 211 (3).

19 **213 Publication of representations about draft EIS**

20 (1) This section applies if—

21 (a) the planning and land authority has publicly notified a draft
22 EIS under section 211; and

23 (b) a person makes a representation about the draft EIS in
24 accordance with the notice under section 211 (1) (a).

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- 1 (2) The planning and land authority must—
- 2 (a) make a copy of the representation available on the authority
- 3 website until—
- 4 (i) the EIS is completed; or
- 5 *Note* For when an EIS is completed, see s 203.
- 6 (ii) the representation is withdrawn; and
- 7 (b) give a copy of the representation to the proponent of the
- 8 proposal.
- 9 *Note 1* This section is subject to s 404 and s 405.
- 10 *Note 2* *Authority website*—see dict.

11 **214** **Revising draft EIS**

- 12 (1) This section applies if—
- 13 (a) a draft EIS for a development proposal has been publicly
- 14 notified under section 211; and
- 15 (b) the public consultation period for the draft EIS has ended.
- 16 (2) The proponent of the development proposal must revise the draft
- 17 EIS and give the revised EIS to the planning and land authority.
- 18 (3) However, the revised EIS must—
- 19 (a) address each matter raised in the scoping document for the
- 20 development proposal; and
- 21 (b) for any matter raised in a representation made within the public
- 22 consultation period for the draft EIS—
- 23 (i) address the matter; and
- 24 (ii) demonstrate how the matter has been taken into account
- 25 in the revised EIS.

- 1 (4) In this section:
2 ***public consultation period***, for a draft EIS—see section 211 (2).
3 *Note* The public consultation period may be extended under s 211 (3).
- 4 **215 Authority consideration of EIS**
- 5 (1) This section applies—
- 6 (a) if the proponent of a development proposal gives the planning
7 and land authority an EIS under section 214 not later than
8 18 months after the scoping document for the proposal is given
9 to the proponent under section 208; or
- 10 (b) if—
- 11 (i) the proponent of a development proposal gives the
12 authority an EIS under section 214 more than 18 months
13 after the scoping document for the proposal is given to the
14 proponent under section 208; and
- 15 (ii) the authority is satisfied that there has been no significant
16 change to the circumstances surrounding the proposal that
17 is not sufficiently addressed in the EIS; or
- 18 (c) if the proponent of a development proposal gives the authority
19 an EIS in accordance with a notice under section 217 (2).
- 20 (2) The planning and land authority must—
- 21 (a) accept the EIS if satisfied that the EIS sufficiently—
- 22 (i) addresses each matter raised in the scoping document for
23 the proposal; and

Section 216

- 1 (ii) takes any timely representation on the draft EIS into
2 account; and
- 3 (iii) demonstrates how any timely representation has been
4 taken into account; or
- 5 (b) in any other case—take action under section 217.
- 6 (3) In this section:
- 7 *EIS* includes an EIS revised under section 217.
- 8 *timely representation*, on a draft EIS, means a representation—
- 9 (a) on the draft EIS; and
- 10 (b) made in accordance with section 212.
- 11 **216 EIS given to authority out of time**
- 12 (1) This section applies if—
- 13 (a) the proponent of a development proposal gives the planning
14 and land authority an EIS under section 214 more than 18
15 months after the scoping document for the proposal is given to
16 the proponent under section 208; and
- 17 (b) the authority is satisfied that—
- 18 (i) there has been significant change to the circumstances
19 surrounding the proposal; and
- 20 (ii) the change is not sufficiently addressed in the EIS.
- 21 (2) The planning and land authority must—
- 22 (a) reject the EIS; and
- 23 (b) give the proponent written notice of the rejection.

-
- 1 **217 Chance to address unaddressed matters**
- 2 (1) This section applies in relation to the EIS for a development
3 proposal given to the planning and land authority under section 214
4 if the authority is not satisfied that the EIS sufficiently addresses
5 each matter (the *outstanding matters*) raised in the scoping
6 document for the proposal.
- 7 (2) The planning and land authority must give the proponent of the
8 development proposal written notice that—
- 9 (a) the authority does not accept the EIS under section 215; and
10 (b) explains why the authority does not accept the EIS; and
11 (c) states the time within which the proponent may respond to the
12 notice, whether by providing a revised EIS or otherwise.
- 13 (3) The time stated under subsection (2) (c) must not be shorter than
14 20 working days.
- 15 (4) In this section:
- 16 *EIS* includes an EIS revised under this section.
- 17 **218 Giving EIS to Minister**
- 18 (1) This section applies if—
- 19 (a) the planning and land authority accepts an EIS under
20 section 215; or
- 21 (b) the authority has given the proponent for a development
22 proposal written notice under section 217 and the time for
23 responding to the notice has ended, whether or not the
24 proponent has revised the EIS and given it to the authority.
- 25 (2) The planning and land authority must give the EIS to the Minister.
- 26 *Note* The Minister may establish a panel to consider the EIS for the proposal
27 (see pt 8.3).

- 1 (3) If a development application has been made for the development
2 proposal, the planning and land authority must give the application
3 to the Minister with the EIS.

4 **219 Notice of no action on EIS given to Minister**

- 5 (1) This section applies if—
- 6 (a) the planning and land authority gives the Minister an EIS under
7 section 218; and
- 8 (b) the Minister decides not to present the EIS to the Legislative
9 Assembly under section 220; and
- 10 (c) the Minister decides not to establish a panel under section 221
11 to conduct an inquiry about the EIS.
- 12 (2) The Minister must give the planning and land authority written
13 notice that the Minister has decided to take no action in relation to
14 the EIS.

15 *Note* If the Minister gives notice under this section, the EIS to which the
16 notice relates is completed (see s 203).

17 **220 Minister may present EIS to Legislative Assembly**

18 The Minister may, but need not, present to the Legislative Assembly
19 an EIS given to the Minister under section 218.

1 **Part 8.3 Inquiry panels**

2 **221 Establishment of inquiry panels**

3 (1) The Minister must, not later than 15 working days after the day an
4 EIS is given to the Minister under section 218—

5 (a) decide whether to establish a panel to conduct an inquiry about
6 the EIS; and

7 (b) if the Minister decides to establish a panel—tell the planning
8 and land authority about the decision.

9 *Note* If the Minister decides not to establish a panel and not to present the
10 EIS to the Legislative Assembly, the Minister must give the planning
11 and land authority written notice of the decision (see s 219).

12 (2) If the Minister decides to establish a panel to conduct an inquiry
13 about an EIS, the Minister may establish the panel to inquire about
14 any or all aspects of the EIS.

15 (3) If the Minister establishes a panel to conduct an inquiry, the
16 Minister must, in writing—

17 (a) prepare terms of reference for the inquiry; and

18 (b) give the proponent notice of the inquiry.

19 *Note* The power to prepare terms of reference for the inquiry includes the
20 power to amend or repeal the terms of reference (see Legislation Act,
21 s 46).

22 (4) The terms of reference are a notifiable instrument.

23 *Note 1* A notifiable instrument must be notified under the Legislation Act.

24 *Note 2* An instrument amending or repealing the terms of reference must also
25 be notified (see Legislation Act, s 46 (2)).

- 1 **222 How does the Minister establish an inquiry panel?**
- 2 (1) The Minister establishes an inquiry panel in relation to an EIS by—
- 3 (a) appointing 1 or more people to the panel; and
- 4 (b) preparing written terms of reference for the inquiry.
- 5 (2) If the Minister appoints more than 1 person to an inquiry panel, the
- 6 Minister must, in writing, nominate a person appointed to be the
- 7 presiding member of the panel.
- 8 (3) However, the Minister must not appoint a person to an inquiry panel
- 9 unless satisfied that the person has the expertise necessary to
- 10 exercise the functions of the panel in relation to the matter inquired
- 11 into.
- 12 (4) Also, the Minister must not appoint any of the following people to
- 13 an inquiry panel for an EIS:
- 14 (a) the chief planning executive;
- 15 (b) a member of the planning and land authority’s staff;
- 16 (c) a member of the land agency’s staff;
- 17 (d) a person prescribed by regulation in relation to the EIS.
- 18 **223 Time for reporting by inquiry panels**
- 19 (1) This section applies if the Minister establishes a panel to conduct an
- 20 inquiry.
- 21 (2) The panel must report in writing to the Minister on the result of the
- 22 inquiry not later than—
- 23 (a) 60 working days after the day the Minister establishes the
- 24 panel; or
- 25 (b) if the period under paragraph (a) is extended under
- 26 subsection (3)—the period under paragraph (a) as extended.

- 1 (3) The Minister may, on application by the panel, extend by written
2 notice the period for reporting.

3 **224 Inquiry panel findings and report to be independent**

- 4 (1) The report of an inquiry panel must be the view of the inquiry panel
5 based on the findings of the panel.

- 6 (2) To remove any doubt, the Minister must not direct an inquiry panel
7 in relation to the findings or report of the panel.

8 **225 Protection of people on inquiry panels from liability**

- 9 (1) A person appointed to an inquiry panel is not personally liable for
10 anything done, or omitted to be done, honestly and without
11 recklessness—

12 (a) in the exercise of a function under this Act; or

13 (b) in the reasonable belief that the conduct was in the exercise of
14 a function under this Act.

- 15 (2) Any liability that would, apart from this section, attach to a person
16 appointed to an inquiry panel attaches instead to the Territory.

1 **Chapter 9 Leases and licences**

2 *Notes to ch 9*

3 Other provisions about the termination of leases and licences and recovering
4 possession of leases are found in pt 11.6.

5 Fees may be determined under s 415 for provisions of this chapter.

6 If a form is approved under s 416 for a provision of this chapter, the form must be
7 used.

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

10 **Part 9.1 Definitions and application—ch 9**

11 **226 Definitions—ch 9**

12 In this chapter:

13 ***building and development provision***, in relation to a lease, means a
14 provision of the lease that requires the lessee to carry out stated
15 works on the land comprised in the lease or on unleased territory
16 land.

17 ***consolidation*** means the surrender of 2 or more leases held by the
18 same lessee and the grant of a new lease or leases to the lessee to
19 consolidate the parcels of land comprised in the surrendered leases.

20 ***deal*** with a lease, means—

21 (a) assign or transfer the lease; or

22 (b) sublet the land comprised in the lease or part of it; or

23 (c) part with possession of the land comprised in the lease or any
24 part of it.

1 **lessee** means the person who is the proprietor of a lease, whether or
2 not the person is the registered proprietor of the lease, and
3 regardless of how the person became the proprietor of the lease.

4 **market value**, of a lease, means the amount that could be expected
5 to be paid for the lease on the open market if it were sold by a
6 willing but not anxious seller to a willing but not anxious buyer.

7 **nominal rent lease** means a lease for nominal rent.

8 **provision**, of a lease, includes a provision incorporated in the lease
9 by reference and any other provision to which the lease is subject.

10 **registered lease** means a lease registered in the register kept under
11 the *Land Titles Act 1925*.

12 **registered proprietor**, in relation to a lease, means the person who is
13 registered under the *Land Titles Act 1925* as proprietor of the lease.

14 **rental lease** means a lease for rent that is more than nominal rent.

15 **residential lease** means a lease granted for residential purposes
16 only.

17 **rural lease** means a lease granted for rural purposes or purposes
18 including rural purposes.

19 **subdivision**—

20 (a) means the surrender of 1 or more leases held by the same
21 lessee, and the grant of new leases to the lessee to subdivide
22 the parcels of land in the surrendered leases; but

23 (b) does not include the subdivision of land under the *Unit Titles*
24 *Act 2001*.

Section 227

- 1 *sublease* means a sublease of—
- 2 (a) a parcel of land, or part of a parcel of land, subject to a lease;
- 3 or
- 4 (b) a building, or part of a building, on a parcel of land subject to a
- 5 lease.
- 6 *sublessee* means the person who is the proprietor of a sublease,
- 7 regardless of how the person became the proprietor of the sublease.

8 **227 Meaning of *concessional lease* and *lease*—Act**

- 9 (1) In this Act:
- 10 *concessional lease*—
- 11 (a) means a lease granted for a consideration less than the full
- 12 market value of the lease, or for no consideration, if neither of
- 13 the following payments has been made to the Territory:
- 14 (i) an amount in relation to the grant of the lease that is equal
- 15 to the lease’s market value at the time of payment or, if
- 16 the amount is paid in parts, at the time of the last
- 17 payment;
- 18 (ii) an amount to reduce the rent payable under the lease to a
- 19 nominal rent under section 266 (Variation of lease to pay
- 20 out rent); and
- 21 (b) includes the following leases:
- 22 (i) a consolidated or subdivided concessional lease;
- 23 (ii) a further concessional lease;
- 24 (iii) a regranted concessional lease; but

- 1 (c) does not include—
- 2 (i) a consolidated or subdivided lease or a further or
- 3 regranted lease, other than a lease mentioned in
- 4 paragraph (b); or
- 5 (ii) a rural lease; or
- 6 (iii) a lease over land that, immediately before the grant of the
- 7 lease, was owned, controlled or held by the commissioner
- 8 for housing under the *Housing Assistance Act 1987*; or
- 9 (iv) a lease prescribed by regulation.

10 **lease** means a lease (other than a sublease) of territory land—

- 11 (a) granted under this Act; or
- 12 (b) granted or arising under the *Unit Titles Act 2001*.

13 *Note* Some leases are taken to have been granted under this Act and so come

14 within this definition of **lease** (see s 446).

- 15 (2) For subsection (1), definition of **concessional lease**, paragraph (a), it
- 16 does not matter whether the consideration for the grant of the lease
- 17 was paid as a lump sum or is payable under the lease as rent.
- 18 (3) In this section:

19 **consolidated or subdivided concessional lease** means a lease

20 granted during a consolidation or subdivision involving the

21 surrender of 1 or more previous leases if 1 or more of the previous

22 leases was a concessional lease.

23 **further concessional lease** means a further lease if the surrendered

24 lease was a concessional lease.

25 **regranted concessional lease** means a regranted lease (whether the

26 regrant is on the same or different conditions) if the surrendered

27 lease was a concessional lease.

1 **228** **Application—ch 9**

2 This chapter does not apply to a transfer by the Territory of a
3 registered lease if the Territory is the registered proprietor of the
4 lease.

1 **Part 9.2 Grants of leases generally**

2 **229 Effect subject to pt 9.7**

3 This part has effect subject to part 9.7 (Rural leases).

4 **230 Authority may grant leases**

5 The planning and land authority is authorised to grant, on behalf of
6 the Executive, leases that the Executive may grant on behalf of the
7 Commonwealth.

8 *Note 1 Lease*—see s 227.

9 *Note 2* For power to delegate this function, see s 19 (2).

10 **231 Granting leases**

11 (1) The planning and land authority may grant a lease by—

12 (a) auction; or

13 (b) tender; or

14 (c) ballot; or

15 (d) direct grant.

16 *Note 1* Not everyone may be eligible to be granted a lease under paragraph (a),
17 (b) or (c) (see s 232).

18 *Note 2* Section 233, s 234, s 235 and s 236 apply to grants under paragraph (d).

19 (2) A lease granted under this section must include a statement about
20 whether the lease is a concessional lease.

21 *Note* A grant must be lodged with the registrar-general under the *Land Titles*
22 *Act 1925* (see *Land Titles Act 1925*, s 17 (2)).

- 1 (3) A lease granted under this section may include provisions—
- 2 (a) requiring the lessee to develop the land comprised in the lease,
- 3 or any unleased territory land, in a stated way; or
- 4 (b) requiring the lessee to give security for the performance of any
- 5 of the lessee's obligations under the lease.

6 **232 Eligibility for grant of lease by auction, tender or ballot**

7 The planning and land authority may restrict the people eligible for

8 the grant of a lease under section 231 (1) (a), (b) or (c) by stating, in

9 the relevant notice of auction, tender or ballot, a class of people

10 eligible or ineligible for the grant of a lease under the auction, tender

11 or ballot.

12 **233 Restriction on direct grant by authority**

- 13 (1) The planning and land authority must not grant a lease under
- 14 section 231 (1) (d)—
- 15 (a) unless—
- 16 (i) the grant is in accordance with criteria prescribed by
- 17 regulation for this section; and
- 18 (ii) the Executive approves the grant; or
- 19 (b) unless—
- 20 (i) the grant is in accordance with criteria prescribed by
- 21 regulation for this section; and
- 22 (ii) the grant is in accordance with criteria prescribed by
- 23 regulation for this paragraph; and
- 24 (iii) the Minister approves the grant; or

- 1 (c) unless the Executive approves the grant under subsection (2);
2 or
3 (d) unless the grant is in accordance with section 234.
- 4 (2) The Executive may approve the direct grant of a lease other than in
5 accordance with criteria prescribed if satisfied that the grant meets 1
6 or more of the following objectives:
- 7 (a) benefit the economy of the ACT or region;
8 (b) contribute to the environment, or social or cultural features in
9 the ACT;
10 (c) introduce new skills, technology or services in the ACT;
11 (d) contribute to the export earnings and import replacement of the
12 ACT or region;
13 (e) facilitate the achievement of a major policy objective.
- 14 (3) The validity of a lease granted under section 231 (1) (d) is not taken
15 to be affected by a failure to comply with the criteria prescribed by
16 regulation for this section.

17 **234 Direct grant if single person in restricted class**

- 18 (1) This section applies if—
19 (a) under section 232 (Eligibility for grant of lease by auction,
20 tender or ballot), the planning and land authority restricts the
21 people eligible to apply for a lease; and
22 (b) only 1 person is eligible for the grant of the lease.
- 23 (2) The planning and land authority may grant the lease to the person
24 under section 231 (1) (d) without auctioning the lease, calling for
25 tenders or holding a ballot.

- 1 **235 Notice of direct grant**
- 2 (1) This section applies to a lease granted by the planning and land
3 authority by direct grant under section 231 (1) (d) in a quarter.
- 4 *Note Quarter*—see Legislation Act, dict, pt 1.
- 5 (2) The planning and land authority must, not later than 5 working days
6 after the end of the quarter, give the Minister—
- 7 (a) a copy of each lease to which this section applies granted in the
8 quarter; and
- 9 (b) a statement that sets out the prescribed information for each
10 lease.
- 11 (3) The Minister must present the documents given under subsection (2)
12 to the Legislative Assembly not later than 5 sitting days after the
13 day the Minister receives the information.
- 14 (4) To remove any doubt, the validity of a lease to which this section
15 applies is not affected by a failure to comply with subsection (2) or
16 (3) in relation to the lease.
- 17 (5) In this section:
- 18 *prescribed information*, for a lease, means—
- 19 (a) the amount (if any) paid for the grant of the lease; and
- 20 (b) if the lease was granted with the approval of the Executive
21 under section 233 (2)—the reason for granting the lease with
22 the approval of the Executive.
- 23 **236 Direct grant leases subject to agreed provisions**
- 24 A lease granted under section 231 (1) (d) must be granted subject to
25 the provisions that are agreed between the planning and land
26 authority and the applicant for the lease.

1 **237 Authority need not grant lease**

- 2 (1) The planning and land authority need not grant a lease to an
3 applicant, even if applications for the lease have been invited.
- 4 (2) If applications for a lease have been invited subject to conditions,
5 the planning and land authority may, without granting a lease, invite
6 fresh applications for the lease subject to the same or other
7 conditions.

8 **238 Planning report before granting leases**

- 9 (1) The planning and land authority may, but need not, prepare a
10 planning report in relation to a proposal to grant a lease.
- 11 (2) The planning and land authority must prepare a planning report in
12 relation to a proposal to grant a lease if directed in writing to do so
13 by the Minister.

14 **239 Payment for leases**

- 15 (1) The planning and land authority must not grant a lease other than for
16 payment of an amount that is not less than the market value of the
17 lease.

18 *Note Lease—see s 227.*

- 19 (2) However, subsection (1) does not apply in relation to—
- 20 (a) a lease granted for a rent that is the full market rental value of
21 the lease; or
- 22 (b) a further lease (other than a rural lease) granted under
23 section 246; or
- 24 (c) a further rural lease granted on payment of an amount
25 determined under section 273; or
- 26 (d) the grant of a lease prescribed by regulation for which the
27 amount prescribed by regulation has been paid.

1 **240 Use of land for leased purpose**

2 (1) Territory land, or a building or structure on the land, in relation to
3 which a lease has been granted, whether before or after the
4 commencement of this part, must not be used for a purpose other
5 than a purpose authorised by the lease.

6 *Note* Beginning a use of land, or a building or structure on the land, is
7 development and may require development approval (see s 7, def
8 *development*, par (d)).

9 (2) However, if the lease authorises the land to be used for residential
10 purposes, the land may also be used for home occupation or home
11 business.

12 (3) A regulation may prescribe what makes up use for home occupation
13 and home business.

14 **241 Access to leased land from roads and road related areas**

15 (1) The planning and land authority must not grant a lease unless
16 satisfied that, during the term of the lease, the lessee will have—

17 (a) direct access to the leased land from a road or road related
18 area; or

19 (b) access to the leased land from a road or road related area by
20 way of an access road or track, or in another way, that the
21 lessee may use for entry or exit only, without charge and at any
22 hour of the day or night.

23 (2) Access provided by the planning and land authority because of
24 subsection (1) (b)—

25 (a) must not interfere with a building, garden or stockyard on the
26 land (the *affected land*) through which the access is provided
27 at the time the access is provided; and

28 (b) must be located in a way that causes as little damage or
29 inconvenience to the lessee of the affected land as possible.

1 (3) The validity of a lease granted under this part is not affected by a
2 failure to comply with this section.

3 (4) In this section:

4 *road*—see the *Road Transport (General) Act 1999*, dictionary.

5 *road related area*—see the *Road Transport (General) Act 1999*,
6 dictionary.

7 **242 No right to use, flow and control of water**

8 A lease or further lease granted under this chapter does not give a
9 right to the use, flow and control of water (including water
10 containing impurities) under the land comprised in the lease.

11 **243 Failure to accept and execute lease**

12 (1) This section applies if, not later than the end of the period prescribed
13 by regulation, a person who is entitled to the grant of a lease under
14 this chapter fails to—

15 (a) accept and execute the lease; or

16 (b) pay any amount the person is required to pay before being
17 granted the lease.

18 (2) The planning and land authority may, by written notice given to the
19 person, end the person's right to be granted the lease.

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

21 (3) The notice under subsection (2) must—

22 (a) state the ground on which it is given; and

23 (b) state that it takes effect on the day 20 working days after the
24 day it is given.

- 1 (4) If the planning and land authority does not know the residential
2 address of the person to whom the notice under subsection (2) is to
3 be given, the authority may give the person the notice by publishing
4 a copy of the notice in a daily newspaper.
- 5 (5) A notice given under subsection (2) takes effect on the day
6 20 working days after the day it is given.
- 7 (6) A person whose right to be granted a lease has been ended under
8 this section does not have any claim for compensation in relation to
9 the ending of the right or for the recovery of any money paid to the
10 planning and land authority in relation to the grant of the lease.

11 **244 Restrictions on dealings with certain leases**

- 12 (1) This section applies in relation to the following leases:
- 13 (a) a lease that provides that the lessee cannot deal with the land,
14 or part of the land, comprised in the lease without the prior
15 written consent of the planning and land authority;
- 16 (b) a lease granted under section 231 (1) by auction, tender or
17 ballot, if the class of people eligible or ineligible for the grant
18 was restricted under section 232;
- 19 (c) a lease granted under section 231 (1) (d) (other than a lease
20 granted to the Territory);
- 21 (d) a lease prescribed by regulation.

22 *Note 1* This section has extended application (see s 440 and s 441).

23 *Note 2* Dealings with concessional leases and rural leases, which are not
24 restricted by this section, are restricted under s 257 and s 277.

- 25 (2) The lessee, or anyone else with an interest in the lease, must not,
26 during the restricted period for the lease, deal with the lease without
27 the written consent of the planning and land authority under
28 section 245.

- 1 (3) A dealing in relation to a lease to which this section applies that is
2 made or entered into without consent has no effect.
- 3 (4) In this section:
4 *deal*, with a lease, does not include sublet the lease.
5 *restricted period*, for a lease to which this section applies, means—
- 6 (a) for a lease that provides that the lessee cannot deal with the
7 land, or part of the land, comprised in the lease without the
8 prior written consent of the planning and land authority—the
9 period stated in the lease or, if no period is stated, the term of
10 the lease; or
- 11 (b) for a lease granted under section 231 (1) by auction, tender or
12 ballot, if the class of people eligible or ineligible for the grant
13 was restricted under section 232—5 years after the day the
14 lease was granted; or
- 15 (c) for a lease granted under section 231 (1) (d)—the period
16 ending 5 years after the day the lease was granted; or
- 17 (d) for a lease prescribed by regulation—
- 18 (i) the period prescribed by regulation for the lease; or
19 (ii) if no period is prescribed—the term of the lease.

- 1 **245 Consent to s 244 dealings**
- 2 (1) The planning and land authority must not consent to a dealing under
- 3 section 244 in relation to a lease unless—
- 4 (a) satisfied that the person to whom it is proposed that the lease
- 5 should be assigned or transferred or the person to whom it is
- 6 proposed that possession of the land should be given, is a
- 7 person who satisfies the criteria prescribed under section 233
- 8 in relation to the class of leases in which the lease is included;
- 9 or
- 10 (b) if the lease was originally granted by restricted auction, tender
- 11 or ballot—satisfied that the person to whom it is proposed that
- 12 the lease should be assigned or transferred or the person to
- 13 whom it is proposed that possession of the land should be
- 14 given, is a person who could have been granted the original
- 15 lease.
- 16 (2) The validity of a dealing made or entered into with the consent of
- 17 the planning and land authority is not affected—
- 18 (a) by a defect or irregularity in relation to the giving of the
- 19 consent; or
- 20 (b) because a ground, or all grounds, for the consent had not
- 21 arisen.

1 **Part 9.3 Grants of further leases**

2 **246 Grant of further leases**

3 (1) This section applies if—

4 (a) a person (the *lessee*) who is or was the holder of a lease (the
5 *old lease*) of land applies to the planning and land authority for
6 the grant of a further lease of the land; and

7 (b) neither the Territory nor the Commonwealth needs the land for
8 a public purpose; and

9 (c) either—

10 (i) before expiry of the old lease, the lessee surrenders the
11 old lease; or

12 (ii) the old lease expired not more than 6 months before the
13 application for the grant of a further lease; and

14 (d) if the old lease is not a residential lease—all rent due under the
15 old lease is paid; and

16 (e) if the lease is a rural lease—the amount determined under
17 section 273 for the grant is paid; and

18 (f) the criteria (if any) prescribed by regulation are satisfied.

19 (2) The planning and land authority must grant the lessee a further lease
20 of the land for a term not longer than—

21 (a) 99 years; or

22 (b) for a rural lease for which a period shorter than 99 years is
23 determined under section 274—the shorter period.

Section 247

1 (3) A further lease granted under this section must include a statement
2 about whether the lease is a concessional lease.

3 *Note* A grant must be lodged with the registrar-general under the *Land Titles*
4 *Act 1925* (see *Land Titles Act 1925*, s 17 (2)).

5 (4) A further lease begins on the day after—
6 (a) the day the old lease is surrendered; or
7 (b) for a further lease granted on application after the expiry of the
8 old lease—the day after the old lease expires.

9 (5) If the term of a further lease granted under subsection (2) is not
10 longer than the term of the old lease, any fee payable under
11 subsection (2) for the grant of the further lease must not be more
12 than the cost of granting the further lease.

13 **247 Grant of further lease includes authorised use**

14 (1) This section applies if a further lease is granted under this part on
15 the surrender of an existing lease.

16 (2) The further lease must authorise each use of the leased land, and any
17 building or structure on the land, that the lease surrendered
18 authorised.

19 (3) However, this section does not apply if a change of use of land, or a
20 building or structure on the land, that involves a lease variation is
21 applied for at the same time as the grant of the further lease is
22 applied for.

1 **Part 9.4** **Concessional leases**

2 **Division 9.4.1** **Deciding whether leases**
3 **concessional**

4 **248** **Application for decision about whether lease**
5 **concessional**

6 A lessee may apply to the planning and land authority for a decision
7 about whether the lease is a concessional lease.

8 **249** **Decision about whether lease concessional**

9 (1) On application under section 248, the planning and land authority
10 must decide whether the lease is concessional or not.

11 (2) However, the planning and land authority must not make a decision
12 under subsection (1) unless the authority has—

13 (a) given written notice (the *application notice*) of the application
14 to each person (other than the lessee) with a registered interest
15 in the lease; and

16 (b) in the application notice, invited the person to give written
17 representations about the application to the authority at a stated
18 address by not later than the end of a stated period of not less
19 than 15 working days after the date the notice is given to the
20 person; and

21 (c) considered any representations made in the time given in the
22 application notice.

1 (3) If the planning and land authority has not made a decision on the
2 application at the end of the period of 15 working days after the day
3 the period for making representations given in the application notice
4 ends, the authority is taken to have decided (the *deemed decision*)
5 that the lease is a concessional lease.

6 *Note* A lessee has a right to apply for review of a decision under this
7 provision (see ch 13 and sch 1).

8 (4) If the planning and land authority is taken to have decided that a
9 lease is a concessional lease under subsection (2), the authority may
10 decide that the lease is not concessional under this section despite
11 the deemed decision.

12 *Note* A decision of the AAT on review is taken to have been a decision of the
13 original decision-maker, so the planning and land authority will not be
14 able to decide that the lease is not concessional if the AAT has decided
15 an application for review of the deemed decision (see *Administrative*
16 *Appeals Tribunal Act 1989*, s 44 (11)).

17 (5) The planning and land authority must give written notice of the
18 decision under subsection to the applicant and anyone else with an
19 interest in the lease to which the decision relates.

20 *Note* If the notice is given to a person who may apply to the AAT for review
21 of the decision to which it relates, the notice must comply with the
22 requirements of the code of practice in force under the *Administrative*
23 *Appeals Tribunal Act 1989*, s 25B (1) (see s 401 (3)).

24 **250 Authority may decide whether lease concessional on own**
25 **initiative**

26 (1) The planning and land authority may, on its own initiative, decide
27 whether a lease is concessional.

- 1 (2) However, the planning and land authority must not make a decision
2 under subsection (1) unless the authority has—
- 3 (a) given written notice (the *lease decision notice*) of the
4 authority's intention to make a decision under subsection (1) to
5 each person with a registered interest in the lease; and
- 6 (b) in the lease decision notice, invited the person to give written
7 representations about the proposed decision to the authority at
8 a stated address by not later than the end of a stated period of
9 not less than 15 working days after the date the notice is given
10 to the person; and
- 11 (c) considered any representations made in the time given in the
12 lease decision notice.
- 13 (3) Also, if the planning and land authority gives a lease decision notice
14 in relation to a lease, the authority must make a decision under
15 subsection (1) in relation to the lease not later than 15 working days
16 after the day the period for making representations given in the lease
17 decision notice ends.
- 18 (4) The planning and land authority must give written notice of the
19 decision under subsection (1) to each person with an interest in the
20 lease to which the decision relates.
- 21 *Note 1* If the notice is given to a person who may apply to the AAT for review
22 of the decision to which it relates, the notice must comply with the
23 requirements of the code of practice in force under the Administrative
24 Appeals Tribunal Act 1989, s 25B (1) (see s 401 (3)).
- 25 *Note 2* A lessee has a right to apply for review of a decision under this
26 provision (see ch 13 and sch 1).

27 **251 Decision that lease is concessional**

- 28 (1) This section applies if—
- 29 (a) the planning and land authority decides that a lease is
30 concessional; and

- 1 (b) either—
- 2 (i) no application is made to the AAT for review of the
- 3 decision that the lease is concessional within the time
- 4 allowed for applications; or
- 5 (ii) an application for review of the decision is made and the
- 6 tribunal decides to confirm the decision.
- 7 *Note* The planning and land authority may decide that a lease is concessional
- 8 under s 249 or s 250.
- 9 (2) The planning and land authority must lodge notice that the lease is a
- 10 concessional lease with the registrar-general for registration under
- 11 the *Land Titles Act 1925*.

12 **Division 9.4.2 Varying concessional leases to**

13 **remove concessional status**

14 **252 Application—div 9.4.2**

15 This division applies to an application for development approval to

16 vary a lease granted as a concessional lease to remove its

17 concessional status.

18 **Example of varying lease to remove concessional status**

19 surrender of the concessional lease and regrant of a lease for market value

20 *Note* An example is part of the Act, is not exhaustive and may extend, but

21 does not limit, the meaning of the provision in which it appears (see

22 Legislation Act, s 126 and s 132).

1 **253 Criteria for application to vary concessional lease**

2 In deciding whether to approve an application for development
3 approval to which this division applies, the planning and land
4 authority or Minister must consider the following:

- 5 (a) whether the Territory wishes to continue to monitor the lease
6 holder and use of the lease by requiring consent before the
7 lease is dealt with;
- 8 (b) whether approving the application would cause any
9 disadvantage to the community;
- 10 (c) whether the application to vary the lease to make it a market
11 value lease is, or is likely to be, part of a larger development
12 and, if it is, or is likely to be, part of a larger development what
13 the larger development will involve;
- 14 (d) whether the Territory should buy back, or otherwise acquire,
15 the lease.

16 **254 Development approval of application about concessional**
17 **lease subject to condition**

18 If the planning and land authority or Minister approves a
19 development application to vary a lease granted as a concessional
20 lease, the approval is subject to the condition that the lessee pays the
21 Territory the payout amount worked out under section 255.

22 *Note 1* The ways a lease may be varied to change its concessional status
23 include by surrender and regrant (see s 252, example).

24 *Note 2* For approval of development applications—see s 158.

25 **255 Working out amount payable to discharge concessional**
26 **leases**

- 27 (1) This section applies if a development application in relation to a
28 lease is subject to the condition that the lessee pays the Territory the
29 payout amount worked out under this section.

- 1 (2) The payout amount for the lease is the amount worked out as
2 follows:

3
$$MV - \left(\frac{AP}{OV} \times MV \right)$$

4 *Note* A person may also be required to pay a change of use charge, less any
5 remittance, plus any increase, under div 9.6.3.

- 6 (3) In this section:

7 *AP*, for a lease, means the amount (if any) paid for the lease at grant.

8 *MV*, for a lease, means the market value of the lease if it were a
9 market value lease.

10 *OV*, for a lease, means the market value of the lease at grant if it had
11 been a market value lease.

- 12 (4) To remove any doubt, an amount paid as rent under a lease is not an
13 amount paid for the lease.

14 **256 Uses under leases varied by surrender and regrant to**
15 **remove concessional status**

16 (1) This section applies to a lease varied only to remove the
17 concessional status of the lease by surrender and regrant of the
18 lease.

19 (2) The regranted lease authorises each use of the land, and any
20 building or structure on the land, authorised under the lease before
21 the lease was varied to remove its concessional status.

22 (3) To remove any doubt—

23 (a) this section does not apply if the lease is varied other than to
24 remove the concessional status of the lease; and

25 (b) subsection (2) applies despite anything to the contrary in the
26 territory plan.

- 1 (b) for a dealing that is a subletting—satisfied that the lessee, or an
2 eligible person, continues to be the main user of the lease.

3 **Examples of lessee continuing to be main user**

- 4 1 A community hospital (the *lessee*) with a concessional lease proposes to
5 sublet an area within the hospital for a coffee shop. The lessee continues to
6 operate the hospital, which is the majority of the site and offers most of the
7 services being provided from the site. The sublease is likely to be allowed
8 because it is a complementary proposed use of the sublet area.
- 9 2 A community group has subleased part of a lease to a commercial enterprise
10 and the remainder of the lease to an eligible person. The sublease to the
11 commercial enterprise is likely to be allowed as long as the eligible person is
12 the main user of the lease.

13 *Note* An example is part of the Act, is not exhaustive and may extend, but
14 does not limit, the meaning of the provision in which it appears (see
15 Legislation Act, s 126 and s 132).

- 16 (2) In deciding whether the lessee proposing to sublet the lease, or an
17 eligible person, continues to be the main user of the lease, the
18 planning and land authority must consider the following:
- 19 (a) the proposed area of the sublease;
- 20 (b) the extent to which the lessee continues to provide most of the
21 goods, services or both to be provided from the area leased;
- 22 (c) the extent to which the use of the area proposed to be subleased
23 will be ancillary to the permitted uses of the area that is not
24 proposed to be subleased;
- 25 (d) the extent to which the use of the area proposed to be subleased
26 will be complementary to the use of the area that is not
27 proposed to be subleased.

- 1 (3) The validity of a dealing made or entered into with the consent of
2 the planning and land authority is not affected—
3 (a) by a defect or irregularity in relation to the giving of the
4 consent; or
5 (b) because a ground, or all grounds, for the consent had not
6 arisen.

1 **Part 9.5** **Rent variations and relief from**
2 **provisions of leases**

3 **259 Variations of rent**

- 4 (1) If the rent payable under a lease is varied in accordance with the
5 provisions of the lease, the planning and land authority must give
6 the lessee written notice of the variation.

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

- 8 (2) A variation of rent mentioned in a notice under subsection (1) comes
9 into operation on—

- 10 (a) the day 20 working days after the day the notice is given; or
11 (b) if the lease under which the variation is made provides that the
12 variation comes into operation on a later day—the later day.

13 **260 Review of variations of rent**

- 14 (1) This section applies if—
15 (a) the rent payable under a lease is varied in accordance with the
16 provisions of the lease; and
17 (b) the lease does not provide for the submission to arbitration of
18 differences between the parties to the lease about variation of
19 the rent.
20 (2) The lessee may, not later than 20 working days after receiving the
21 notice under section 259 (1) about the variation, ask the planning
22 and land authority in writing to review the variation.
23 (3) The making of the request does not affect the operation of the
24 variation to which the request relates or prevent the taking of action
25 to implement the variation.

- 1 (4) If the request is made in relation to a variation, the planning and
2 land authority must review the variation and may—
3 (a) confirm the variation; or
4 (b) set the variation aside and substitute any other variation the
5 authority considers appropriate.

6 **261 Reduction of rent and relief from provisions of lease**

- 7 (1) The planning and land authority may approve—
8 (a) a reduction of the rent payable under a lease, or of the amount
9 payable, in relation to any occupation of territory land; or
10 (b) the grant of relief, to a lessee or occupier of territory land, from
11 compliance, completely or partly, with any provision to which
12 the person's lease or occupation is subject.
- 13 (2) The reduction or grant of relief may be for a maximum period of
14 3 years, and may include a period before the approval.
- 15 (3) If the planning and land authority gives an approval under
16 subsection (1), the liability or obligation of the lessee or occupier
17 under the lease, or in relation to the person's occupation, is
18 discharged for the period approved, to the extent of the reduction or
19 grant of relief approved.
- 20 (4) An approval under subsection (1) may be conditional.
- 21 (5) If the planning and land authority approves a grant of relief to a
22 lessee or occupier under subsection (1), the authority must give the
23 lessee or occupier written notice of the reduction of rent or amount
24 payable or other grant of relief approved.
- 25 *Note* For how documents may be given, see the Legislation Act, pt 19.5.
- 26 (6) For subsection (1), the reduction or grant of relief may be for, or
27 include, a period before the commencement of this section.

Chapter 9
Part 9.5

Leases and licences
Rent variations and relief from provisions of leases

Section 261

- 1 (7) Subsection (6), this subsection and subsection (8) expire 1 year after
2 the day this section commences.
- 3 (8) Subsection (6) is a law to which the Legislation Act, section 88
4 (Repeal does not end transitional effect) applies.

1 **Part 9.6** **Lease variations**

2 **Division 9.6.1** **Lease variations—general**

3 **262** **Effect subject to pt 9.7**

4 This part has effect subject to part 9.7 (Rural leases).

5 **263** **Application to surrender and regrant leases**

6 (1) A reference in this part to the *variation* of a lease includes a
7 reference to the surrender of a lease and the grant of a new lease to
8 the same lessee, subject to different provisions, over land that—

9 (a) is all or part of the land comprised in the surrendered lease; and

10 (b) is not in an area identified in the territory plan as a future urban
11 area.

12 (2) However, a reference in this part to the *variation* of a lease does not
13 include a reference to the surrender of a lease and the grant of a
14 further lease under section 246.

15 **Division 9.6.2** **Variation of rental leases**

16 **264** **Variation of rental leases**

17 (1) The planning and land authority must not execute a variation of a
18 rental lease unless any rent, including additional rent, payable under
19 the lease up to the day of variation has been paid.

1 (2) If the planning and land authority executes a variation of a rental
2 lease, the authority must reappraise the rent payable under the lease,
3 following (as far as possible) the method provided by the rental
4 provisions of the lease.

5 *Note* The application of subsection (2) (and s (3)) is reduced by
6 subsection (4).

7 (3) If the planning and land authority executes a variation of a rental
8 lease, the rent payable under the lease is to be adjusted in
9 accordance with the reappraisal under subsection (2) with effect
10 from the day the variation is executed.

11 (4) Subsections (2) and (3) do not apply to a variation of a rental
12 lease—

13 (a) to reduce the rent payable to a nominal rent; or

14 (b) otherwise affecting the rental provisions of the lease.

15 **265 Advice of rent payable on variation of lease**

16 (1) This section applies if—

17 (a) the planning and land authority agrees to a variation of a lease;
18 and

19 (b) the lease is a lease under which rent or additional rent is
20 payable.

21 (2) The planning and land authority must—

22 (a) calculate the amount that would be payable under the lease for
23 rent, including additional rent, up to the day when the authority
24 expects the variation to be executed; and

25 (b) give the lessee written notice of—

26 (i) the amount calculated for rent, including additional rent,
27 under paragraph (a); and

- 1 (ii) the day up to which the amount payable for rent and
2 additional rent has been calculated; and
- 3 (iii) the day by which the authority requires payment of the
4 amount stated under subparagraph (i) to allow the
5 variation of the lease to be executed on the day stated
6 under subparagraph (ii).

7 **266 Variation of lease to pay out rent**

- 8 (1) A lease must not be varied to reduce the rent payable to a nominal
9 rent unless—
- 10 (a) the lease is included in a class of leases prescribed by
11 regulation; and
- 12 (b) all amounts payable to the Territory up to the day of variation
13 of the lease for rates and land tax levied in relation to the land
14 comprised in the lease have been paid; and
- 15 (c) the provisions of the lease requiring the lessee to develop the
16 land comprised in the lease have been complied with up to the
17 day of the variation; and
- 18 (d) the lessee has paid the Territory an amount decided by the
19 planning and land authority by reference to any policy
20 direction made under subsection (2).
- 21 (2) The Minister may make policy directions for subsection (1) (d).
- 22 (3) A policy direction is a disallowable instrument.
- 23 *Note* A disallowable instrument must be notified, and presented to the
24 Legislative Assembly, under the Legislation Act.
- 25 (4) If a lease is varied to reduce the rent payable to a nominal rent, the
26 lease as varied must provide that the lessee is to pay a rent of 5 cents
27 each year if and when that rent is demanded.

- 1 (5) The requirements of this section are in addition to, and not in
2 substitution for, the requirements of the other provisions of this Act
3 relating to the variation of leases.

4 **267 No variations to extend term**

5 The planning and land authority must not execute a variation of a
6 lease to extend the term of the lease.

7 **268 No variation of certain leases for 5 years**

- 8 (1) This section applies to the following leases:

9 (a) a lease granted in accordance with section 234;

10 (b) a lease to which section 244 applies.

11 *Note* This section also applies to leases granted under the *Land (Planning and*
12 *Environment) Act 1991*, s 164 (see s 441).

- 13 (2) However, this does not apply to a lease exempted by regulation.

- 14 (3) The planning and land authority must not consent to the variation of
15 a lease to which this section applies earlier than 5 years after the day
16 the lease is granted.

17 **Division 9.6.3 Variation of nominal rent leases**

18 **269 Variation of nominal rent lease—change of use charge**

- 19 (1) The planning and land authority must not execute a variation of a
20 nominal rent lease unless the lessee has paid the Territory any
21 change of use charge worked out by the authority, less any
22 remission under section 271, plus any increase under section 272.

23 *Note* The change of use charge is worked out under s 270.

- 24 (2) A variation of a lease has no effect if the change of use charge
25 payable under subsection (1) for the variation is not paid.

- 1 V_2 —
- 2 (a) for a variation other than a consolidation or subdivision, means
- 3 the capital sum that the lease might be expected to realise if—
- 4 (i) the lease were not varied during the remainder of its term;
- 5 and
- 6 (ii) the lease were genuinely offered for sale immediately
- 7 before the variation on the reasonable terms and
- 8 conditions that a genuine seller would require; and
- 9 (iii) the rent payable throughout the term of the lease, or lease
- 10 to be surrendered, were a nominal rent; or
- 11 (b) for a variation that is a consolidation or subdivision, means the
- 12 capital sum that the lease or leases to be surrendered under the
- 13 consolidation or subdivision might be expected to realise if—
- 14 (i) no consolidation or subdivision were to take place during
- 15 the remainder of the term of the surrendered lease or
- 16 leases; and
- 17 (ii) the lease or leases were genuinely offered for sale
- 18 immediately before the consolidation or subdivision on
- 19 the reasonable terms and conditions that a genuine seller
- 20 would require; and
- 21 (iii) the rent payable throughout the term of the lease or leases
- 22 to be surrendered were a nominal rent.
- 23 (3) If the capital value assessed as V_1 is equal to or less than the capital
- 24 value assessed as V_2 , no change of use charge is payable.

25 **271 When authority must remit change of use charge**

26 The planning and land authority must remit all or part of a change of

27 use charge for a variation of a lease under section 269 in the

28 circumstances prescribed by regulation.

1 **272** **When authority must increase change of use charge**

2 The planning and land authority must increase a change of use
3 charge for a variation of a lease under section 269 in the
4 circumstances prescribed by regulation.

1 **Part 9.7** **Rural leases**

2 *Note to pt 9.7*

3 *Improvement*, in relation to rural leases, has a special meaning (see s 281).

4 **Division 9.7.1** **Further rural leases**

5 **273** **Determination of amount payable for further leases—rural**
6 **land**

- 7 (1) The Minister may make a determination for section 246 (1) (e).
- 8 (2) If the Minister has not made a determination under this section, the
9 amount that is taken to have been determined for a rural lease is the
10 market value.
- 11 (3) A determination under subsection (1) is a disallowable instrument.

12 *Note* A disallowable instrument must be notified, and presented to the
13 Legislative Assembly, under the Legislation Act.

14 **274** **Fixing period for further leases—rural land**

- 15 (1) The Minister may make a determination for section 246 (2) (b).
- 16 (2) However, if the national capital authority has set a maximum term
17 for a rural lease of land in a designated area, the Minister must not
18 determine a period under subsection (1) for a further rural lease of
19 the land in a designated area that is longer than the maximum term
20 set by the national capital authority.
- 21 (3) A determination under subsection (1) is a disallowable instrument.

22 *Note* A disallowable instrument must be notified, and presented to the
23 Legislative Assembly, under the Legislation Act.

1 **Division 9.7.2 Exceptions for rural leases**

2 **275 Definitions—div 9.7.2**

3 In this division:

4 *discharge amount* means the discharge amount worked out as
5 prescribed by regulation.

6 *holding period*, for a lease, is a period ending—

- 7 (a) if the discharge amount is paid; or
8 (b) in relation to a lease for a term of 21 years or longer—10 years
9 after the lease commences; or
10 (c) in relation to a lease for a term shorter than 21 years—at the
11 end of $\frac{1}{3}$ the term of the lease.

12 **276 Land management agreements**

13 *Note* Section 278 contains exceptions to this section.

14 (1) This section applies to the following actions:

- 15 (a) granting a rural lease;
16 (b) granting a further rural lease;
17 (c) varying a rural lease;
18 (d) consenting to the assignment or transfer of a rural lease.

19 (2) The planning and land authority may take action to which this
20 section applies only if—

- 21 (a) the person to whom the lease is to be granted, assigned or
22 transferred, or the person whose lease is to be varied, has
23 entered into an agreement with the Territory about managing
24 the rural land comprised in the lease; and
25 (b) the agreement complies with this section.

- 1 (3) An agreement between a person and the Territory complies with this
2 section if it is—
- 3 (a) in accordance with a form approved by the Minister under
4 section 416 (Approved forms) for this section; and
- 5 (b) signed by—
- 6 (i) the conservator of flora and fauna; and
7 (ii) the person.
- 8 (4) An agreement may contain a provision allowing the agreement to be
9 varied other than by agreement between the parties.

10 **277 Dealings with rural leases**

11 *Note* Section 278 contains exceptions to this section.

- 12 (1) This section applies to—
- 13 (a) a rural lease granted under section 231 (Granting leases); and
14 (b) a grant of a further lease of a rural lease.

15 *Note* This section has an extended application (see s 444).

- 16 (2) A lessee, or anyone else with an interest in the lease, must not deal
17 with a lease to which this section applies without the written consent
18 of the planning and land authority.
- 19 (3) A dealing in relation to a lease made or entered into without consent
20 has no effect.
- 21 (4) The planning and land authority must not consent under this section
22 to a dealing in relation to a lease unless—
- 23 (a) the lessee's domestic partner or child is the person to whom—
24 (i) the lease is being assigned or transferred; or
25 (ii) the land comprised in the lease, or part of it, is sublet; or

- 1 (iii) possession of the land comprised in the lease, or part of it,
2 is being given; or
- 3 (b) the holding period for the lease has ended.
- 4 (5) The validity of a dealing made or entered into with the consent of
5 the planning and land authority is not affected—
- 6 (a) by a defect or irregularity in relation to the giving of the
7 consent; or
- 8 (b) because a ground, or all grounds, for the consent had not
9 arisen.
- 10 (6) To remove any doubt, a person is not required to pay a discharge
11 amount more than once under this section in relation to a rural lease.
- 12 (7) In this section:
- 13 *child*, of a lessee, includes a child of the lessee's domestic partner.

14 **278 Exceptions to s 276 and s 277**

15 Section 276 and section 277 do not apply to the transfer or
16 assignment of a lease, or an interest in the lease, if—

- 17 (a) the lessee has died; or
- 18 (b) the transfer or assignment is made under any of the following
19 orders:
- 20 (i) an order of the Family Court;
- 21 (ii) an order of another court having jurisdiction under the
22 *Family Law Act 1975* (Cwlth);
- 23 (iii) an order under the *Domestic Relationships Act 1994*,
24 division 3.2 adjusting the property interests of the parties
25 in a domestic relationship; or

- 1 (c) the transfer or assignment happens by operation of, or under,
2 bankruptcy or insolvency.

3 *Note* The person to whom the lease, or interest, has been transferred or
4 assigned must enter into a land management agreement (see s 279).

5 **279 Delayed requirement to enter into land management**
6 **agreement**

7 (1) This section applies if a lease, part of the lease or an interest in the
8 lease, to which section 276 or section 277 applies has been
9 transferred or assigned to someone (the *interest holder*) who has not
10 entered into a land management agreement for the rural land
11 comprised in the lease, or part of the lease, or to which the interest
12 relates.

13 (2) The interest holder must enter into a land management agreement
14 for the rural land comprised in the lease, or part of the lease, or to
15 which the interest relates not later than 6 months (or any extended
16 period) after the day the lease, part of the lease or interest, is
17 transferred or assigned to the interest holder.

18 (3) The planning and land authority may, in writing, extend the period
19 under subsection (2) for entering into a land management
20 agreement.

21 *Note* The planning and land authority may extend the period under s (2) after
22 the end of the period being extended (see Legislation Act, s 151C (3)).

23 **280 No subdivision or consolidation of rural leases**

24 The planning and land authority must not consent to the
25 consolidation or subdivision of a lease to which section 277 applies
26 during the holding period.

1 **Part 9.8** **Leases—improvements**

2 **281** **Definitions—pt 9.8**

3 In this part:

4 *improvement*, in relation to land, means—

- 5 (a) a building or structure on the land; or
6 (b) in relation to land held under a rural lease—
7 (i) a building or structure on or under the land; or
8 (ii) any improvement to the land reasonably undertaken for
9 rural purposes.

10 *lessee*, for a lease that has ended, whether by termination, surrender,
11 end of term or otherwise, means the person who was the lessee
12 under the lease when the lease ended.

13 *undertaken*, in relation to an improvement that is a building or
14 structure, means the construction of the building or structure.

15 **282** **Application of pt 9.8 to improvements**

16 This part applies only to the following improvements to land:

- 17 (a) an improvement undertaken in a way consistent with the law of
18 the Territory, and with any lease over the land, other than—
19 (i) an improvement undertaken by the Territory or the
20 Commonwealth (subject to paragraph (b)); or
21 (ii) an improvement acquired by the Territory or the
22 Commonwealth (subject to paragraph (c));

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- 1 (b) an improvement undertaken by the Territory or the
2 Commonwealth, if the Territory or the Commonwealth has
3 received, or is entitled to receive, payment for the
4 improvement;
- 5 (c) an improvement acquired by the Territory or the
6 Commonwealth, if the Territory or the Commonwealth has
7 received, or is entitled to receive, payment for the
8 improvement.

9 **283 Renewing lessee not liable to pay for improvements**

- 10 (1) This section applies if—
- 11 (a) the term of a lease expires; and
- 12 (b) there are improvements to which this part applies on the land
13 comprised in the lease; and
- 14 (c) the lessee is granted a further lease of the land or part of it.
- 15 (2) The lessee is not liable to pay the planning and land authority for the
16 improvements on the land or part of the land.

17 **284 Authority to pay for certain improvements**

- 18 (1) This section applies if—
- 19 (a) the term of a lease expires; and
- 20 (b) there are improvements to which this part applies on the land
21 comprised in the lease; and
- 22 (c) there is no provision in the lease that precludes or limits the
23 right of the lessee to payment in relation to the improvements;
24 and
- 25 (d) the lessee is not granted a further lease of the land, or is
26 granted a lease of only part of the land.

27 *Note* Section 286 and s 287 make this section apply in other cases.

- 1 (2) The planning and land authority is liable to pay the lessee—
2 (a) if no further lease of the land is granted to the lessee—the
3 amount decided by the authority to be the value of the
4 improvements on the land; or
5 (b) if a further lease of only part of the land is granted to the
6 lessee—the amount decided by the authority to be the value of
7 the improvements to which this section applies on the part of
8 the land not leased.
- 9 *Note* Under s 285, the planning and land authority may be required to deduct
10 an amount from the amount payable under this section.

11 **285 Land declared available for further lease**

- 12 (1) This section applies if—
13 (a) the planning and land authority is liable to pay a lessee an
14 amount under section 284; and
15 (b) before the expiry of the term of the lease, the authority
16 declared that the land comprised in the lease, or part of the
17 land, was available for a further lease; and
18 (c) the lessee does not elect to take a further lease of the land, or
19 part of the land, declared to be available not later than
20 6 months after the expiry of the term of the lease.
- 21 (2) The amount of any expenditure reasonably incurred by the
22 Territory, the planning and land authority or both, in relation to the
23 grant of a lease of the land, or part of the land, to anyone else must
24 be deducted from the amount payable to the lessee under
25 section 284.

26 **286 Lease surrendered or terminated**

- 27 (1) This section applies if—
28 (a) a lease is surrendered or terminated; and

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- 1 (b) the lessee has fully complied with the provisions (if any) of the
2 lease relating to the construction of a building on the land
3 comprised in the lease; and
- 4 (c) there is no provision in the lease that precludes or limits the
5 right of the lessee to payment in relation to improvements on
6 the land comprised in the lease.
- 7 (2) Section 284 and section 285 apply in relation to the lease (so far as
8 applicable) as if the term of the lease had expired on the day the
9 lease was surrendered or terminated.
- 10 (3) However, the amount worked out under subsection (4) must be
11 deducted from any amount payable under section 284 to the lessee
12 of the surrendered or terminated lease.
- 13 (4) The planning and land authority may work out the amount of the
14 expenditure reasonably incurred by the Territory, the authority or
15 both, in relation to the surrender or termination of the lease.

16 **287 Withdrawal of lease or part before end**

- 17 (1) This section applies if—
- 18 (a) before the end of the term of a lease, the planning and land
19 authority withdraws all or part of the leased land from the lease
20 under a provision of the lease; and
- 21 (b) the lessee has fully complied with the provisions (if any) of the
22 lease relating to the construction of a building on the land
23 comprised in the lease; and
- 24 (c) there is no provision in the lease that precludes or limits the
25 right of the lessee to payment in relation to improvements on
26 the land comprised in the lease.
- 27 (2) Section 284 and section 285 apply in relation to the lease, or the part
28 of the lease that comprises the land withdrawn, as if the term of the
29 lease, or part of the lease, had ended on the day of the withdrawal.

1 **288 Deciding value of improvements**

2 (1) In this section:

3 *assessment day* means—

4 (a) in relation to land if the term of the lease has expired—the day
5 the term expired; or

6 (b) in relation to land a lease of which has been terminated or
7 surrendered—the day the lease was terminated or surrendered;
8 or

9 (c) in relation to land that has been withdrawn from a lease—the
10 day of withdrawal.

11 *market value*, in relation to improvements on land, means the
12 amount by which the improvements increase the value of the lease
13 of the land, assuming that the lease, together with the improvements,
14 were offered for sale on the open market on the day before the
15 assessment day on the reasonable terms and conditions that a
16 genuine seller might require.

17 (2) If compensation is payable under this part in relation to
18 improvements, the planning and land authority must, as soon as
19 practicable after the assessment day in relation to the land where the
20 improvements are situated, in writing, decide, in accordance with
21 this section, the market value of the improvements on the land as at
22 the assessment day.

23 (3) If compensation is payable under section 284, the planning and land
24 authority must, in valuing the improvements, assume that a further
25 lease of the land had been granted subject to the same provisions,
26 and for the same term, as the lease the term of which has expired.

27 (4) If compensation is payable under section 286, the planning and land
28 authority must, in valuing the improvements, assume that the lease
29 of the land had not been terminated or surrendered.

Chapter 9
Part 9.8

Leases and licences
Leases—improvements

Section 288

- 1 (5) If compensation is payable under section 287, the planning and land
2 authority must, in valuing the improvements, assume that the leased
3 land or part of the leased land had not been withdrawn from the
4 lease.

1 **Part 9.9** **Leases—certificates of**
2 **compliance and building and**
3 **development provisions**

4 **289** **Certificates of compliance**

- 5 (1) If a building and development provision of a lease has been fully
6 complied with, the planning and land authority must, on application
7 by the lessee, issue a certificate of compliance stating that the
8 provision has been complied with.

9 *Note* A single form may be used for a number of provisions, so a joint
10 certificate of completion, certificate of compliance and certificate of
11 occupancy may be issued (see Legislation Act, s 255 (7)).

- 12 (2) If a building and development provision of a lease has been partly
13 complied with, the planning and land authority may issue a
14 certificate of compliance stating that the provision has been partly
15 complied with.

- 16 (3) A certificate of compliance under subsection (2) may be issued
17 subject to a condition (stated in the certificate) that the lessee
18 provides security in a stated form against failure to complete stated
19 outstanding work.

- 20 (4) This section is subject to section 290.

21 **290** **Certificates of compliance relating to Unit Titles Act**
22 **leases**

- 23 (1) The planning and land authority must not issue a certificate of
24 compliance under section 289 in relation to a building and
25 development provision that a lease under the *Unit Titles Act 2001* is
26 subject to unless satisfied under subsection (2).

Section 291

- 1 (2) The planning and land authority must be satisfied—
- 2 (a) for every other lease in relation to the same subdivision under
- 3 the *Unit Titles Act 2001* that is subject to a building and
- 4 development provision—that the provision has been complied
- 5 with, or a certificate of compliance has been issued under
- 6 section 289 in relation to the provision; or
- 7 (b) that the occupier of the unit that is held under the lease will
- 8 not, as occupier, be substantially inconvenienced by works
- 9 being carried out, or that are to be carried out, in compliance
- 10 with a building and development provision to which the lease
- 11 of the common property or another unit contained in the same
- 12 subdivision under the *Unit Titles Act 2001* is subject.
- 13 (3) For subsection (2), an occupier is *substantially inconvenienced* by
- 14 works being carried out, or that are to be carried out, if the works
- 15 are being, or are to be, carried out to the common property, or
- 16 another unit, in the same stage of the development as the occupier's
- 17 unit.

18 **291 Mortgage of leasehold subject to building and**

19 **development provision**

- 20 (1) This section applies if a lease contains a building and development
- 21 provision.
- 22 (2) The lease, or an interest in the lease, cannot be mortgaged unless—
- 23 (a) the lessee has obtained a certificate of compliance under
- 24 section 289; or
- 25 (b) the mortgage is required by the lessee—
- 26 (i) to allow the lessee to repay money borrowed by the lessee
- 27 to acquire the lease or interest; or
- 28 (ii) to secure money borrowed by the lessee to acquire the
- 29 lease or interest; or

- 1 (iii) to allow the lessee to comply with a building and
2 development provision of the lease.

3 **292 Transfer of land subject to building and development**
4 **provision**

5 (1) A lease containing a building and development provision, or an
6 interest in the lease, cannot be assigned or transferred, either at law
7 or in equity unless—

- 8 (a) the lessee has died; or
9 (b) the transfer or assignment is made under any of the following
10 orders:

- 11 (i) an order of the Family Court;
12 (ii) an order of another court having jurisdiction under the
13 *Family Law Act 1975* (Cwlth);
14 (iii) an order under the *Domestic Relationships Act 1994*,
15 division 3.2 adjusting the property interests of the parties
16 in a domestic relationship; or

17 (c) the transfer or assignment happens by operation of, or under,
18 bankruptcy or insolvency; or

- 19 (d) the lessee has—
20 (i) a certificate of compliance under section 289; or
21 (ii) the consent of the planning and land authority under
22 subsection (2) or (3).

23 *Note* A consent under the *City Area Leases Ordinance 1936* may be taken to
24 be a consent under s (2) (see *Land (Planning and Environment)*
25 *Act 1991*, s 292 (expired)).

- 1 (2) The planning and land authority may, in writing, consent to a legal
2 or equitable assignment or transfer of a lease containing a building
3 and development provision, or an interest in the lease, if—
- 4 (a) the authority—
- 5 (i) is satisfied that the proposed assignee or transferee
6 intends to comply with the building and development
7 provision; and
- 8 (ii) has been given the security (if any) required by the
9 authority for compliance with the provision by the
10 proposed assignee or transferee; and
- 11 (b) either—
- 12 (i) the authority is satisfied that the lessee cannot, for
13 personal or financial reasons, comply with the building
14 and development provision; or
- 15 (ii) the proposed transferee or assignee (the *homebuyer*) has a
16 contract with the person (the *builder*) proposing to
17 transfer or assign the lease and, under the contract, the
18 builder is required to build a home on the leased land for
19 the homebuyer.
- 20 (3) The planning and land authority may also, in writing, consent to a
21 transfer of a lease containing a building and development provision,
22 or an interest in the lease, if the proposed transfer is the first sale of
23 an individual lease of undeveloped land by the person who provided
24 the infrastructure on, and subdivided, the holding lease of which the
25 individual lease is a subdivision.
- 26 (4) In deciding under subsection (2) or (3) whether to consent to an
27 assignment or transfer of a lease, the planning and land authority
28 must take into consideration any matters prescribed by regulation.

1 **Part 9.10** **Surrendering and termination of**
2 **leases**

3 **293 Refund on lease surrender or termination**

- 4 (1) This section applies if a lease is surrendered or terminated under this
5 Act.
- 6 (2) On application by the person surrendering the lease or the person
7 whose lease has been terminated, the planning and land authority
8 may authorise payment to the person of the amount prescribed by
9 regulation.
- 10 (3) The planning and land authority must not authorise the payment of
11 an amount under this section otherwise than in accordance with
12 criteria prescribed by regulation.

13 **294 Lessee may surrender lease or part of lease**

- 14 (1) A person who holds a lease may, at any time, with the consent of the
15 planning and land authority, surrender the lease or part of the land
16 comprised in the lease.
- 17 *Note* For provisions about compensation for improvements, see pt 9.8.
- 18 (2) The planning and land authority may agree to accept the surrender
19 of a lease, or part of the land comprised in a lease, under
20 subsection (1) either unconditionally or subject to any condition the
21 authority considers appropriate.
- 22 (3) The surrender of a lease, or part of the land comprised in a lease,
23 does not entitle the lessee to a refund or remission of any rent
24 already paid or owing.

- 1 (c) be accompanied by a written consent by the custodian for the
2 subject land to the issue of the licence applied for.

3 **297 Decision on licence applications for unleased land**

- 4 (1) On receiving an application under section 296, the planning and
5 land authority may grant the applicant a licence to occupy or use the
6 land, and any building or structure on the land, stated in the
7 application for the purposes and period stated in the application.

8 *Note* An application must be accompanied by the custodian's written consent
9 to the issue of the licence applied for.

- 10 (2) However, the planning and land authority must not grant a licence
11 under subsection (1) to occupy or use public land unless the
12 conservator of flora and fauna agrees in writing to the grant.

13 **298 Licences—form etc**

- 14 (1) A licence granted under section 297 must—
15 (a) be in writing; and
16 (b) state the period for which it is granted.
17 (2) A licence granted under section 297—
18 (a) applies to the person to whom it is granted; and
19 (b) is subject to the conditions (if any) stated in the licence.

20 **299 Licences—when not needed**

21 A person need not hold a licence granted under section 297 to
22 occupy or use an area of unleased territory land if—

- 23 (a) the person holds a permit under the *Roads and Public Places*
24 *Act 1937* to place an object in, over or across the area; and
25 (b) the area is being occupied or used in accordance with the
26 permit; and

- 1 (c) for an occupation or use that requires development approval—
2 (i) the occupation or use has development approval; and
3 (ii) if the occupation or use has development approval subject
4 to a condition—the person is complying with the
5 condition.

1 **Part 9.12** **Leases and licences—**
2 **miscellaneous**

3 **300 Land leased to be held as undivided parcel**

- 4 (1) The land comprised in a lease must at all times be held and occupied
5 by or under the lessee as 1 undivided parcel, unless section 301,
6 section 302 or section 303 provides otherwise.
- 7 (2) The land comprised in a lease may be sublet and the lease and any
8 interest in it may be assigned, transferred or mortgaged, unless a
9 provision of this chapter provides otherwise.

10 **301 Power of lessee to sublet part of building**

- 11 (1) Any part of a building on land comprised in a lease may, subject to
12 the lease, any sublease of the land and this Act, be sublet separately
13 from the remainder of the building.

14 *Note* Section 244 and s 277 require consent before subleasing in some cases.

- 15 (2) If a part of a building is sublet separately from the remainder of the
16 building, any part of the parcel of land with the building on it may
17 be sublet with the part of the building separately from the remainder
18 of the parcel of land, as long as the part of the parcel of land sublet
19 adjoins the part of the parcel of land with the building on it.
- 20 (3) To remove any doubt, nothing in this section prevents the subletting
21 of a whole building.

- 1 **302 Power of lessee to sublet part of land**
- 2 (1) Any part of land comprised in a lease must not be sublet without the
- 3 prior written approval of the planning and land authority.
- 4 (2) The planning and land authority must not approve the subletting of a
- 5 part of land comprised in a lease other than in accordance with
- 6 criteria prescribed by regulation.
- 7 (3) This section does not apply to a part of land sublet under
- 8 section 303.
- 9 (4) To remove any doubt, nothing in this section prevents development
- 10 in accordance with this Act on land sublet.
- 11 **303 Subletting for siting of mobile homes**
- 12 (1) This section applies if—
- 13 (a) a lease of territory land authorises the use of the land
- 14 comprised in the lease as a mobile home park; and
- 15 (b) part of the land is being used, or intended to be used, for the
- 16 siting of a mobile home.
- 17 (2) The part of the land may, subject to the lease and any sublease of the
- 18 land, be sublet separately from the remainder of the land.
- 19 (3) In this section:
- 20 *mobile home* means a dwelling (whether or not on wheels) capable
- 21 of being transferred from place to place and re-erected.
- 22 *mobile home park* means land used for the purpose of
- 23 accommodating mobile homes or caravans, and includes a caravan
- 24 park or camping ground.

1 **304 Reservation of minerals**

2 A reservation of minerals contained in a lease must be read as a
3 reservation of all minerals and mineral substances in or on the land,
4 including gold, silver, copper, tin, other metals, ores and substances
5 containing metals, gems, precious stones, coal, limestone, shale,
6 mineral oils, valuable earths and substances, stone, clay, gravel and
7 sand.

8 **305 Access to lease documents and development agreements**

9 (1) The *Freedom of Information Act 1989*, section 11 (2) does not apply
10 to a document that became a document of a Commonwealth agency
11 before 1 January 1977 and is—

12 (a) a lease; or

13 (b) a variation of a lease; or

14 (c) a renewal of a lease.

15 (2) A document is taken not to be an exempt document for the *Freedom*
16 of *Information Act 1989* if the document is—

17 (a) a lease; or

18 (b) a variation of a lease; or

19 (c) a renewal of a lease.

20 **306 How land may be recovered if former lessee or licensee**
21 **in possession**

22 (1) This section applies if—

23 (a) a person who has been a lessee remains in possession of the
24 land after—

25 (i) the term of the lease has ended; or

26 (ii) the lease has been surrendered or ended; or

- 1 (b) a person who has been a licensee remains in possession of the
2 land after—
- 3 (i) the term of the licence has ended; or
- 4 (ii) the licence has been surrendered or ended.
- 5 (2) The planning and land authority may, by written notice to the person
6 (the *unlawful occupier*), demand that the unlawful occupier give
7 possession of the land to the authority within the reasonable period
8 stated in the demand.
- 9 (3) If a demand is not complied with—
- 10 (a) the planning and land authority may apply to the Magistrates
11 Court for an order that possession of the land be given to the
12 authority; and
- 13 (b) the court may issue a warrant authorising a police officer,
14 within 20 working days after the day the warrant is issued, to
15 enter the land with the assistance and by the force that is
16 reasonable, and give possession of the land to the authority.
- 17 (4) In this section:
- 18 *licence* means a licence granted by the Territory, the
19 Commonwealth or the planning and land authority.

1 **Chapter 10** **Management of public land**

2 *Notes to ch 10*

3 Licences over public land are granted under pt 9.11.

4 Fees may be determined under s 415 for provisions of this chapter.

5 If a form is approved under s 416 for a provision of this chapter, the form must be
6 used.

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

9 **Part 10.1** **Interpretation—ch 10**

10 **307** **Definitions—ch 10**

11 In this chapter:

12 *Note* *Custodian*—see s 326 (see dict). *Custodianship map*—see s 327
13 (see dict).

14 *management objectives*, for an area of public land—see section 311.

15 *plan of management* means a plan of management under part 10.4.

16 *variation*, of a plan of management, includes the revocation of the
17 plan and its substitution with a new plan.

1 **Part 10.2** **Providing for public land**

2 **308** **Recommendations to authority**

3 The custodian for an area of unleased land, or the conservator of
4 flora and fauna, may, in writing, recommend to the planning and
5 land authority that the territory plan be varied to provide—

6 (a) for the identification of the area of land (or part of it) as public
7 land and its reservation for a purpose mentioned in section 309;
8 or

9 (b) in relation to an area already identified in the plan as public
10 land—

11 (i) for the variation of the boundaries of the area to reduce or
12 increase the size of the area, or to alter the shape of the
13 area; or

14 (ii) for the variation of the purpose for which the area is
15 reserved; or

16 (iii) that the land stops being public land.

1 **Part 10.3** **Management of public land**

2 **309** **Reserved areas—public land**

3 Public land may be reserved in the territory plan, whether in the map
4 or elsewhere in the plan, for any of the following purposes:

- 5 (a) a wilderness area;
- 6 (b) a national park;
- 7 (c) a nature reserve;
- 8 (d) a special purpose reserve;
- 9 (e) an urban open space;
- 10 (f) a cemetery or burial ground;
- 11 (g) the protection of water supply;
- 12 (h) a lake;
- 13 (i) a sport and recreation reserve;
- 14 (j) a heritage area.

15 **310** **Management of public land**

16 An area of public land must be managed in accordance with—

- 17 (a) the management objectives applying to the area; and
- 18 (b) any plan of management for the area.

- 1 **311 Management objectives for areas of public land**
- 2 (1) The *management objectives* for an area of public land reserved for a
- 3 particular purpose are—
- 4 (a) the management objectives stated in schedule 3 in relation to
- 5 areas of land reserved for the purpose; and
- 6 (b) the management objectives stated by the conservator of flora
- 7 and fauna under subsection (2) in relation to areas of land
- 8 reserved for the purpose.
- 9 (2) The conservator of flora and fauna may determine management
- 10 objectives for an area of public land reserved for a purpose
- 11 mentioned in schedule 3.
- 12 *Note* A power given under an Act to make a statutory instrument (including a
- 13 determination of management objectives) includes power to amend or
- 14 repeal the instrument (see Legislation Act, s 46 (1)).
- 15 (3) A determination of management objectives is a disallowable
- 16 instrument.
- 17 *Note 1* A disallowable instrument must be notified, and presented to the
- 18 Legislative Assembly, under the Legislation Act.
- 19 *Note 2* An amendment or repeal of a determination of management objectives
- 20 is also a disallowable instrument (see Legislation Act, s 46 (2)).
- 21 (4) If there is an inconsistency between the application of
- 22 2 management objectives stated in schedule 3 in relation to an area
- 23 of public land, the objective appearing later in the schedule is to be
- 24 read subject to the earlier objective.
- 25 (5) If there is an inconsistency between the application of a
- 26 management objective stated in schedule 3 and a management
- 27 objective stated by the conservator of flora and fauna under
- 28 subsection (2) in relation to an area of public land, the objective
- 29 stated by the conservator is to be read subject to the objective in
- 30 schedule 3.

- 1 (6) In schedule 3:
- 2 *natural environment* means all biological, physical and visual
- 3 elements of the earth and its atmosphere, whether natural or
- 4 modified.

1 **Part 10.4** **Plans of management for public**
2 **land**

3 **312** **Meaning of *proponent*—pt 10.4**

4 In this part:

5 *proponent* means—

- 6 (a) for a draft plan of management for an area of public land—the
7 custodian of the land; or
- 8 (b) for a draft variation of a plan of management for an area of
9 public land—
- 10 (i) the custodian of the land; or
- 11 (ii) if the draft variation was prepared by the conservator of
12 flora and fauna—the conservator of flora and fauna.

13 **313** **Content of plans of management**

14 A plan of management must include—

- 15 (a) a description of the area of public land to which it applies; and
- 16 (b) how the management objectives for the area are to be
17 implemented or promoted in the area.

18 **314** **Preparation of plans of management**

- 19 (1) The custodian for an area of public land must prepare a draft plan of
20 management for the area as soon as practicable after the area is
21 identified as public land in the territory plan.
- 22 (2) The custodian for an area of public land may prepare a draft plan of
23 management for the area if the custodian considers the existing plan
24 of management is outdated.

- 1 (3) In preparing a draft plan of management for an area, the custodian
2 for the area must consider any comment by the planning and land
3 authority or the conservator of flora and fauna in relation to the area
4 or the draft plan.

5 *Note* If the draft plan of management does not incorporate any comments by
6 the planning and land authority or the conservator, an explanation of
7 why must be given to the Minister (see s 319).

8 **315 Variations of plans of management**

- 9 (1) The custodian for an area of public land, or the conservator of flora
10 and fauna, may prepare a draft variation of a plan of management in
11 the same way as a draft plan of management.
- 12 (2) However, the conservator of flora and fauna must not prepare a draft
13 variation of a plan of management for an area of public land unless
14 the conservator has consulted the custodian for the area.
- 15 (3) This part applies to a draft variation of a plan of management as if it
16 were a draft plan of management.

17 **316 Planning reports and SEAs—draft plans of management**

- 18 (1) At any time before a draft plan of management is approved under
19 section 321 (3) (a), the Minister may direct that a planning report or
20 strategic environmental assessment be completed for any aspect of
21 the draft plan.
- 22 (2) The Minister may act under subsection (1) after receiving a written
23 request from the conservator of flora and fauna or on the Minister's
24 own initiative.
- 25 (3) In preparing or revising a draft plan of management, the proponent
26 must consider any relevant planning report or strategic
27 environmental assessment.

- 1 **317 Public consultation about draft plans of management**
- 2 (1) This section applies to a draft plan of management (the *final draft*
- 3 *plan*) for an area of public land if—
- 4 (a) no preliminary draft plan of management for the area has been
- 5 notified under section 62; or
- 6 *Note* A preliminary draft plan of management for an area would be notified
- 7 under section 62 as a background paper to a territory plan variation (see
- 8 s 57, def *background papers*).
- 9 (b) if a preliminary draft plan of management has been notified
- 10 under section 62—the final draft plan differs significantly from
- 11 the preliminary draft plan.
- 12 (2) The proponent of the final draft plan must make copies of the final
- 13 draft plan available—
- 14 (a) to an appropriate committee of the Legislative Assembly; and
- 15 (b) for public inspection during office hours at the places stated in
- 16 a written notice (the *public inspection notice*) prepared by the
- 17 proponent.
- 18 (3) The public inspection notice must invite people to give written
- 19 representations about the draft plan of management to the proponent
- 20 at a stated address by not later than the end of a stated period of not
- 21 less than 15 working days after the date the notice is notified under
- 22 the Legislation Act.
- 23 (4) The public inspection notice is a notifiable instrument.
- 24 *Note* A notifiable instrument must be notified under the Legislation Act.
- 25 (5) The proponent of the final draft plan must also publish the public
- 26 inspection notice in a daily newspaper.

1 **318** **Revision of draft plans of management**

2 The proponent of a draft plan of management may revise the draft
3 plan—

- 4 (a) after considering any written representations received about the
5 draft plan; or
6 (b) to correct any formal error.

7 **319** **Giving draft plans of management to Minister**

8 The proponent of a draft plan of management for an area of public
9 land must give the draft plan (whether revised under section 318 or
10 otherwise) to the Minister for approval, together with—

- 11 (a) a written report setting out the issues raised in any written
12 comments given to the proponent in relation to the draft plan;
13 and
14 (b) if the planning and land authority or conservator of flora and
15 fauna made comments in relation to the area or the draft plan
16 and the draft plan does not incorporate the comments—a
17 written explanation of why the draft plan does not incorporate
18 the comments; and
19 (c) a written report about the proponent’s consultation with the
20 public and with anyone else about the draft plan.

21 **320** **Consideration of draft plans of management by**
22 **Legislative Assembly committee**

- 23 (1) This section applies if the Minister is given a draft plan of
24 management under section 319.
25 (2) Not later than 5 working days after the day the Minister receives the
26 draft plan of management, the Minister must give the following to
27 an appropriate committee of the Legislative Assembly:
28 (a) a copy of the draft plan;

- 1 (b) a copy of the reports mentioned in section 319 relating to the
2 draft plan.

3 **321 Minister's powers on receiving draft plans of**
4 **management**

- 5 (1) This section applies if the Minister receives a draft plan of
6 management given for approval under section 319 or section 322.
- 7 (2) The Minister must consider any recommendation relating to the
8 draft plan of management made by a committee of the Legislative
9 Assembly under section 320.
- 10 (3) The Minister must—
- 11 (a) in writing, approve the plan of management in the form given;
12 or
- 13 (b) refer the draft plan to the proponent of the draft together with
14 1 or more of the following written directions:
- 15 (i) to conduct further stated consultation;
- 16 (ii) to consider any revision suggested by the Minister;
- 17 (iii) to revise the draft in a stated way;
- 18 (iv) to defer giving the draft to the Minister again until a
19 stated date or the happening of a stated event;
- 20 (v) to withdraw the draft in writing.

21 *Note* A plan of management approved by the Minister is a disallowable
22 instrument (see s 324).

- 23 (4) The following are notifiable instruments:
- 24 (a) a deferral of a draft plan of management by the proponent of
25 the draft plan in accordance with a direction under
26 subsection (3) (b) (iv);

- 1 (b) a withdrawal of a draft plan of management by the proponent
2 of the draft plan in accordance with a direction under
3 subsection (3) (b) (v).

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

5 **322 Referral of draft plans of management to proponent**

6 If the Minister refers a draft plan of management to the proponent of
7 the draft plan under section 321 (3) (b), the proponent must—

- 8 (a) if the Minister gives a direction under section 321 (3) (b) (i)—
9 comply with the Minister’s directions; and
10 (b) if the Minister gives a direction under section 321 (3) (b) (ii) or
11 (iii)—revise the draft plan if the proponent considers
12 appropriate; and
13 (c) revise the draft to correct any formal error; and
14 (d) submit the draft plan of management (as revised) to the
15 Minister for approval together with a written report about—
16 (i) the proponent’s compliance with the Minister’s
17 directions; and
18 (ii) any revision of the draft under paragraph (c).

19 **323 Notice of revival of deferred draft plans of management**

- 20 (1) This section applies if—
21 (a) the proponent of a draft plan of management defers the draft
22 plan as directed under section 321 (3) (b) (iv) (Minister’s
23 powers on receiving draft plans of management); and
24 (b) either—
25 (i) the day stated in the deferral for revival of the draft plan
26 arrives; or

- 1 (ii) the event mentioned in the deferral for revival of the draft
2 plan happens.
- 3 (2) The proponent of the draft plan of management must prepare a
4 notice, on the day stated in the deferral, or as soon as possible after
5 the event mentioned in the deferral, stating that the draft plan is
6 revived.
- 7 (3) A notice is a notifiable instrument.
- 8 *Note* A notifiable instrument must be notified under the Legislation Act.
- 9 (4) The proponent of the draft plan of management must also publish
10 the notice in a daily newspaper.

11 **324 Plans of management—notification, presentation,
12 disallowance and date of effect**

- 13 (1) A plan of management approved by the Minister under section 321
14 is a disallowable instrument.
- 15 *Note* A disallowable instrument must be notified, and presented to the
16 Legislative Assembly, under the Legislation Act.
- 17 (2) Subject to any disallowance under the Legislation Act, chapter 7,
18 the plan of management commences—
- 19 (a) on the day after the 6th sitting day after the day the plan is
20 presented to the Legislative Assembly under that chapter; or
- 21 (b) if the plan provides for a later date or time of
22 commencement—on the later date or time.

23 **325 Review of plans of management**

- 24 (1) This section applies if there is a plan of management for an area of
25 public land.

- 1 (2) The custodian of the land must—
- 2 (a) review the plan of management at least once every 10 years;
- 3 and
- 4 (b) if satisfied that the plan of management is no longer
- 5 appropriate for the land—prepare a draft variation of the plan
- 6 of management for the land (see s 315).

1 **Part 10.5 Custodianship map**

2 **326 What is a *custodian*?**

3 A *custodian* for an area of land is an administrative unit or other
4 entity with administrative responsibility for land in the ACT that is
5 unleased land, public land or both.

6 *Note* *Entity* includes an unincorporated body and a person (including a
7 person occupying a position) (see Legislation Act, dict, pt 1).

8 **327 Custodianship map**

- 9 (1) The planning and land authority must create and maintain a map
10 (the *custodianship map*) that identifies, and reflects who has
11 administrative responsibility for land in the ACT that is unleased
12 land, public land or both.
- 13 (2) The custodianship map may include anything else the planning and
14 land authority considers appropriate.

1 **Part 10.6 Leases for public land**

2 **328 Definitions—pt 10.6**

3 In this part:

4 *defined period*, in relation to future public land, means the period of
5 interim effect under part 5.3 of the draft plan variation that
6 designates the land to become public land.

7 *future public land* means land designated to become public land in
8 a draft plan variation publicly notified under part 5.3.

9 **329 Leases of public land—generally**

10 The planning and land authority must not, except in accordance with
11 section 330, grant a lease of—

- 12 (a) public land; or
13 (b) future public land during the defined period.

14 **330 Grant of leases of public land**

- 15 (1) On the written recommendation of the conservator of flora and
16 fauna and the custodian, the planning and land authority may grant a
17 lease of an area, or part of an area, of public land unless the area is
18 reserved under the plan as a wilderness area.
- 19 (2) On the written recommendation of the conservator of flora and
20 fauna and the custodian, the planning and land authority may,
21 during the defined period, grant a lease of an area, or part of an area,
22 of future public land unless it is proposed in the draft plan variation
23 that designates the land to become public land that the area be
24 reserved as a wilderness area.

- 1 **Part 10.7** **Public land—miscellaneous**
- 2 **331** **Miners' rights in relation to public land**
- 3 A miner's right must not be granted in relation to public land.

1 **Chapter 11** **Controlled activities**

2 *Notes to ch 11*

3 Fees may be determined under s 415 for provisions of this chapter.

4 If a form is approved under s 416 for a provision of this chapter, the form must be
5 used.

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

8 **Part 11.1** **Interpretation—ch 11**

9 **332** **Definitions**

10 In this Act:

11 *complainant*—see section 334 (1) (b).

12 *controlled activity* means—

13 (a) an activity mentioned in schedule 2; or

14 (b) an activity, including an activity under another Act, prescribed
15 by regulation.

16 *controlled activity order* means an order made under part 11.3.

1 **Part 11.2** **Complaints about controlled**
2 **activities**

3 **333 Who may complain?**

4 Anyone who believes a person is conducting, or has conducted, a
5 controlled activity may complain to the planning and land authority.

6 *Note* A person is not required to make a complaint (see Legislation Act,
7 s 146 (1)).

8 **334 Form of complaints**

9 (1) A complaint must—

10 (a) be in writing; and

11 (b) be signed by the person making the complaint (the
12 *complainant*); and

13 (c) include the complainant's name and a contact address; and

14 (d) identify the conduct complained about.

15 **Examples of complaints in writing**

16 1 emailed complaints

17 2 faxed complaints

18 3 complaints by mail

19 **Examples of contact addresses**

20 1 email address

21 2 postal address

22 3 work address

23 4 home address

24 *Note* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears (see
26 Legislation Act, s 126 and s 132).

- 1 (2) However, the planning and land authority may accept a complaint
2 for consideration even if it does not comply with subsection (1).
- 3 (3) If the planning and land authority accepts for consideration a
4 complaint that is not in writing, the authority must require the
5 complainant to put the complaint in writing unless there is a good
6 reason for not doing so.

7 **335 Withdrawal of complaints**

- 8 (1) A complainant may withdraw the complaint at any time by written
9 notice to the planning and land authority.
- 10 (2) If the complainant withdraws the complaint, the planning and land
11 authority—
- 12 (a) need take no further action on the complaint; but
- 13 (b) may continue to act on the complaint if the authority considers
14 it appropriate to do so.
- 15 (3) Also, if the complainant withdraws the complaint, the planning and
16 land authority need not report to the complainant under section 338
17 on the result of any action in relation to the complaint.

18 **336 Further information about complaints etc**

- 19 (1) The planning and land authority may, at any time, require a
20 complainant to give the authority further information about the
21 complaint.
- 22 (2) When making a requirement under this section, the planning and
23 land authority must give the complainant a reasonable period of
24 time within which the requirement is to be satisfied and may extend
25 that period.
- 26 (3) If the complainant does not comply with a requirement made of the
27 complainant under subsection (1), the planning and land authority
28 may, but need not, take further action in relation to the complaint.

1 **337 Investigation of complaints**

2 The planning and land authority must take reasonable steps to
3 investigate each complaint made in accordance with section 334.

4 **338 Action after investigating complaints**

5 (1) After investigating a complaint made under this part, the planning
6 and land authority must do 1 or more of the following:

7 (a) if satisfied that no further action is necessary in relation to the
8 complaint—give the complainant notice under subsection (2)
9 and take no further action in relation to the complaint;

10 *Note* For what the authority must consider for par (a), see s 339.

11 (b) if satisfied that the complaint can be more appropriately dealt
12 with by another entity—refer the complaint to the other entity
13 under section 340;

14 *Note* See examples below.

15 (c) if satisfied that the complaint contains evidence that suggests
16 that a disciplinary ground exists in relation to a construction
17 occupations licensee—refer the complaint to the construction
18 occupations registrar;

19 (d) if sufficient grounds exist to give someone an information
20 requirement—give someone an information requirement under
21 section 388;

22 (e) take action under part 11.3 (Controlled activity orders) in
23 relation to the conduct complained about;

24 (f) if grounds exist under a regulation to issue an infringement
25 notice in relation to the conduct complained about—issue an
26 infringement notice in relation to the conduct;

- 1 (g) if satisfied that it would be appropriate for rectification work to
2 be done—direct a person to carry out rectification work under
3 part 11.4 (Rectification work) in relation to the conduct
4 complained about;
- 5 (h) if satisfied that it would be appropriate to give a prohibition
6 notice in relation to the conduct complained about—give a
7 prohibition notice under part 11.5 (Prohibition notices) in
8 relation to the conduct;
- 9 (i) if satisfied that there are grounds for issuing an injunction in
10 relation to the conduct complained about—apply to the
11 Supreme Court for an injunction under part 11.6 (Injunctions,
12 terminations and ending leases and licences) in relation to the
13 conduct;
- 14 (j) take action under part 11.6 to terminate a lease or licence;
- 15 (k) take any other action the authority considers appropriate.

16 **Examples—par (b)**

- 17 1 the complaint is about a potential fire hazard and would be better dealt with
18 by the emergency services authority
- 19 2 the complaint is about a leasehold that is unclean because leftover chemicals
20 are stored on it and would be better dealt with by the environment protection
21 authority
- 22 3 the complaint is about a leasehold that is unclean because a person with a
23 disability cannot make decisions about day-to-day living, and would be
24 better dealt with by the public advocate

25 *Note* An example is part of the Act, is not exhaustive and may extend, but
26 does not limit, the meaning of the provision in which it appears (see
27 Legislation Act, s 126 and s 132).

- 28 (2) The planning and land authority must give the complainant written
29 notice about the action the authority decides to take under
30 subsection (1).

1 (3) To remove any doubt, the planning and land authority may take
2 action under a provision mentioned in subsection (1) (c) to (j) even
3 if—

4 (a) the authority is not acting on a complaint; or

5 (b) the complaint the authority is acting on has been withdrawn.

6 (4) In this section:

7 ***construction occupations licensee***—

8 (a) means a person who is licensed under the *Construction*
9 *Occupations (Licensing) Act 2004*; and

10 (b) in relation to conduct, includes a person who was licensed
11 under that Act when the conduct happened.

12 ***disciplinary ground***, in relation to a construction occupations
13 licensee—see the *Construction Occupations (Licensing) Act 2004*,
14 section 54.

15 ***rectification work***—see section 358.

16 **339 When authority satisfied no further action on complaint**
17 **necessary**

18 In considering whether no further action should be taken in relation
19 to a complaint under section 338, the planning and land authority
20 must consider whether the complaint—

21 (a) lacks substance; or

22 (b) is frivolous, vexatious or was not made honestly; or

23 (c) has been adequately dealt with.

24 **Examples of complaints lacking substance—par (a)**

25 1 the conduct complained about is not a controlled activity

26 2 the conduct complained about has development approval

- 1 (v) each person to whom the order sought is to be directed;
- 2 (vi) the place in relation to which the order is sought;
- 3 (vii) the grounds on which the order is sought.
- 4 (3) The planning and land authority must give written notice (the *show*
5 *cause notice*) of the application to—
- 6 (a) each person to whom the controlled activity order sought is to
7 be directed; and
- 8 (b) if different from the person or people mentioned in
9 paragraph (a)—the lessee or occupier of the place in relation to
10 which the order is sought.
- 11 *Note* For how documents may be given, see the Legislation Act, pt 19.5.
- 12 (4) The show cause notice must—
- 13 (a) be accompanied by a copy of the application; and
- 14 (b) contain a statement to the effect that the person to whom it is
15 given may, not later than 10 working days after the day the
16 person is given the notice, give the planning and land authority
17 written reasons explaining why the order should not be made.
- 18 (5) The show cause notice may also include any other information that
19 the planning and land authority considers appropriate.
- 20 (6) To remove any doubt, a person is not prevented from applying for a
21 controlled activity order only because the person has made a
22 complaint in relation to the same matter.

23 **344 Decision on application for controlled activity order**

- 24 (1) Before deciding whether to make a controlled activity order on an
25 application under section 343, the planning and land authority must
26 consider any reasons given in accordance with the show cause
27 notice.

- 1 (2) The planning and land authority may decide—
2 (a) to make a controlled activity order of the kind sought; or
3 (b) to make a controlled activity order (including a different kind
4 of order) that is not more burdensome than the order sought; or
5 (c) not to make a controlled activity order.

6 **Example of less burdensome order—par (b)**

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

11 *Note* An example is part of the Act, is not exhaustive and may extend, but
12 does not limit, the meaning of the provision in which it appears (see
13 Legislation Act, s 126 and s 132).

- 14 (3) A controlled activity order may be directed to 1 or more of the
15 following:

- 16 (a) the person against whom the order is sought to be directed;
17 (b) if the planning and land authority considers that the order
18 would be more appropriately directed to someone else
19 mentioned in section 343 (3) (b)—that person.

- 20 (4) The planning and land authority is taken to have refused to make the
21 controlled activity order applied for under section 343 if the
22 authority fails to decide the application before the end of the period
23 prescribed by regulation.

24 *Note* There may be a right of review for a decision under this section (see
25 ch 13 and sch 1).

- 1 (4) Also, the show cause notice—
- 2 (a) must contain a statement to the effect that the person to whom
- 3 it is given may, not later than 10 working days after the day the
- 4 person is given the notice, give the planning and land authority
- 5 written reasons explaining why the controlled activity order
- 6 should not be made; and
- 7 (b) may include any other information that the authority considers
- 8 appropriate.

9 **347 Inaction after show cause notice**

- 10 (1) This section applies if—
- 11 (a) the planning and land authority has given a show cause notice
- 12 under this division; and
- 13 (b) the authority has not made a decision under section 348 in
- 14 relation to the controlled activity order mentioned in the notice
- 15 within the time prescribed by regulation.
- 16 (2) The planning and land authority is taken to have decided not to
- 17 make the controlled activity order.
- 18 (3) Also, the planning and land authority must not make the controlled
- 19 activity order unless the authority gives a further show cause notice
- 20 in relation to the order.

21 **348 Decision on proposed controlled activity order on**

22 **authority's own initiative**

- 23 (1) Before deciding whether to make a controlled activity order
- 24 mentioned in a show cause notice, the planning and land authority
- 25 must consider any reasons given in accordance with the show cause
- 26 notice.

- 1 (2) The planning and land authority may decide—
- 2 (a) to make a controlled activity order in relation to a controlled
- 3 activity mentioned in the show cause notice; or
- 4 (b) not to make the controlled activity order mentioned in the show
- 5 cause notice.
- 6 (3) A controlled activity order may be directed to 1 or more of the
- 7 following:
- 8 (a) the person against whom the order mentioned in the show
- 9 cause notice is directed;
- 10 (b) if the planning and land authority considers that the order
- 11 would be more appropriately directed to someone else
- 12 mentioned in section 346 (2) (b)—that person.

13 **Division 11.3.3 Ongoing controlled activity orders**

14 **349 What is an *ongoing controlled activity order*?**

15 An *ongoing controlled activity order* is a controlled activity order

16 that—

- 17 (a) remains in force for a stated period of 2 or more years, but not
- 18 longer than 5 years; and
- 19 (b) cannot be revoked on application by the person to whom the
- 20 order is directed.

21 **350 When can an ongoing controlled activity order be made?**

- 22 (1) The planning and land authority may make an ongoing controlled
- 23 activity order under division 11.3.1 (Controlled activity orders on
- 24 application) or division 11.3.2 (Controlled activity orders on
- 25 authority's initiative).

- 1 (2) However, the planning and land authority must not make an ongoing
2 controlled activity order unless—
- 3 (a) the controlled activity to which the order relates is failing to
4 keep a leasehold clean; and
- 5 (b) the order is directed to a named person; and
- 6 (c) each person to whom the order is directed has contravened 2 or
7 more controlled activity orders relating to failing to keep a
8 leasehold clean in relation to the leasehold for which the
9 ongoing controlled activity order is proposed to be made; and
- 10 (d) at least 2 of the contraventions by each person happened in the
11 period of 5 years ending on the day the ongoing controlled
12 activity order is made.

13 **Example of order not against named person**

14 an order directed to the occupier of the premises at 123 Happy Street

15 *Note* An example is part of the Act, is not exhaustive and may extend, but
16 does not limit, the meaning of the provision in which it appears (see
17 Legislation Act, s 126 and s 132).

18 **Division 11.3.4 Provisions applying to all controlled**
19 **activity orders**

20 **351 Content of controlled activity orders**

- 21 (1) A controlled activity order must state—
- 22 (a) that it is a controlled activity order under this Act made by the
23 planning and land authority; and
- 24 (b) each person to whom the order is directed; and
- 25 (c) the terms of the order and the place in relation to which the
26 order applies; and
- 27 (d) the grounds on which the order is made; and

- 1 (e) when the order takes effect; and
- 2 (f) for an order other than an ongoing controlled activity order—if
- 3 appropriate—
- 4 (i) the period for compliance with the order; and
- 5 (ii) when the order ends (including, for example, on the
- 6 happening of an event stated in the order); and
- 7 (g) for an ongoing controlled activity order—
- 8 (i) when the order ends; and
- 9 (ii) that the order cannot be revoked on application.
- 10 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 11 does not limit, the meaning of the provision in which it appears (see
- 12 Legislation Act, s 126 and s 132).
- 13 (2) A controlled activity order must also contain a statement to the
- 14 effect that the order operates until it is revoked or ends in
- 15 accordance with the order.
- 16 (3) A controlled activity order may direct anyone to whom it is directed
- 17 to do 1 or more of the following:
- 18 (a) not to begin a development without development approval;
- 19 (b) not to carry out a development without development approval;
- 20 (c) not to undertake a controlled activity other than a development;
- 21 (d) to comply with the terms of a development approval to
- 22 undertake a development;
- 23 (e) to carry out a development in accordance with a condition
- 24 under the development approval that approved the
- 25 development;

- 1 (f) to demolish a building or structure, or a part of a building or
2 structure, that has been constructed without development
3 approval or permission required under a territory law;
- 4 (g) to demolish a building or structure, or a part of a building or
5 structure, that encroaches onto, over or under unleased territory
6 land without approval granted under a territory law;
- 7 (h) to restore any land, building or structure that has been altered
8 without development approval or permission required under a
9 territory law;
- 10 (i) to replace with an identical building or structure any building
11 or structure that has been demolished without development
12 approval or permission required under a territory law;
- 13 (j) to apply for development approval for a building or structure,
14 or part of a building or structure, that has been constructed
15 without development approval;
- 16 (k) to clean up a leasehold and keep it clean;
- 17 (l) if the person to whom the order is directed is bound by a land
18 management agreement—to comply with the land management
19 agreement.

20 **352 Notice of making of controlled activity orders**

- 21 (1) If the planning and land authority makes a controlled activity order,
22 the authority must give notice of the making of the order to the
23 following:
- 24 (a) each person to whom the order is directed;
- 25 (b) the applicant (if any) for the order;
- 26 (c) the lessee or occupier of the place in relation to which the order
27 applies;
- 28 (d) the registrar-general;

1 (e) if the order relates to the pruning of a protected tree—the
2 conservator of flora and fauna;

3 *Note* For restrictions on pruning etc of protected trees, see the *Tree*
4 *Protection Act 2005*.

5 (f) anyone else whose interests the authority believes are
6 adversely affected by the order.

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

8 (2) To remove any doubt, if a person is given a notice under section 401
9 in relation to the making of a controlled activity order, the person
10 need not be given a separate notice under this section in relation to
11 the making of the order.

12 (3) In this section:

13 *protected tree*—see the *Tree Protection Act 2005*, section 8.

14 **353 Who is bound by a controlled activity order?**

15 (1) A controlled activity order binds each person to whom it is directed.

16 (2) If a controlled activity order binds the lessee of the place to which
17 the order applies, unless the order otherwise provides, the order also
18 binds anyone who becomes the lessee of the place after the order is
19 made to the same extent as if the order had been directed to that
20 person.

21 (3) If a controlled activity order binds the occupier of the place to which
22 the order applies, unless the order otherwise provides, the order also
23 binds anyone who becomes an occupier of the place after the order
24 is made to the same extent as if the order had been directed to that
25 person.

1 **354 Contravening controlled activity orders**

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

10 Maximum penalty: the amount stated in schedule 2, column 3 in
11 relation to the activity for which the order was made.

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

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

15 **355 Notice of appeal against controlled activity orders**

- 16 (1) This section applies if—
- 17 (a) a person complains about conduct under part 11.2; and
- 18 (b) because of the complaint, or investigations arising from the
19 complaint, the authority makes a controlled activity order
20 directed to a person (the *directed person*); and
- 21 (c) the directed person appeals to the AAT for review of the
22 decision to make the order.
- 23 (2) The planning and land authority must tell the complainant in writing
24 about the appeal.

1 **356** **Ending controlled activity orders**

- 2 (1) A controlled activity order operates until it is revoked or ends in
3 accordance with the order.
- 4 (2) A person who is bound by a controlled activity order other than an
5 ongoing controlled activity order may, in writing, apply to the
6 planning and land authority for the revocation of the order.
- 7 (3) The application must state the grounds on which the revocation of
8 the controlled activity order is sought.
- 9 (4) The planning and land authority may revoke the controlled activity
10 order if satisfied, on reasonable grounds, that the order is no longer
11 necessary or appropriate.

12 **357** **Notice ending controlled activity orders**

- 13 (1) If a controlled activity order ends otherwise than by being revoked,
14 the planning and land authority must give written notice of the
15 ending of the order to the registrar-general.
- 16 (2) If the planning and land authority revokes a controlled activity
17 order, the authority must give written notice of the revocation to
18 each person given notice of the making of the order under
19 section 352 (1).

1 **Part 11.4 Rectification work**

2 *Note to pt 11.4*

3 An authorised person, and anyone assisting the authorised person, must take
4 reasonable steps to minimise damage when exercising a function under this
5 chapter (see s 406). The Territory may be liable to pay compensation for any
6 damage caused (see s 407).

7 **358 Definitions—pt 11.4**

8 In this part:

9 *authorised person*—see section 361 (1).

10 *rectification work*—

11 (a) means—

12 (i) work in relation to a place where a controlled activity is
13 being conducted to ensure compliance with the
14 development approval for the activity; or

15 (ii) the conduct of an activity required under a controlled
16 activity order that was not carried out within the period
17 stated in the order; and

18 (b) in relation to an authorised person—means the rectification
19 work the authorised person is authorised to carry out.

20 **359 Direction to carry out rectification work**

21 (1) The planning and land authority may direct 1 or more of the
22 following to carry out rectification work in relation to a controlled
23 activity:

24 (a) the lessee or occupier of a place where the activity was or is
25 being conducted;

- 1 (b) anyone by whom or on whose behalf the activity was or is
2 being conducted.
- 3 (2) The planning and land authority must give notice of the direction
4 to—
- 5 (a) the person who is required to comply with the direction; and
6 (b) if different from the person mentioned in paragraph (a)—the
7 lessee or occupier of the place to which the direction applies.
- 8 *Note* For how documents may be given, see the Legislation Act, pt 19.5.
- 9 (3) The notice must state—
- 10 (a) that it is a direction under this Act made by the planning and
11 land authority; and
- 12 (b) the person who is required to comply with the direction; and
13 (c) the place in relation to which the direction applies; and
14 (d) the rectification work required; and
15 (e) the grounds on which the direction is given; and
16 (f) that the rectification work must be completed not later than
17 5 working days after the day the notice is given to the person
18 or any longer period stated in the notice.
- 19 (4) The notice must also contain a statement to the effect that, if the
20 rectification work is not completed by the end of the period required
21 by the notice—
- 22 (a) the planning and land authority may authorise someone else to
23 carry out the work; and
- 24 (b) the reasonable cost of carrying out the work is a debt to the
25 Territory by the person who is required to comply with the
26 direction.

- 1 (5) This section applies whether or not a proceeding for an offence
2 against this chapter has been begun or is about to begin.

3 **360 Contravening direction to carry out rectification work**

- 4 (1) A person commits an offence if—
5 (a) the planning and land authority directs the person to carry out
6 rectification work in relation to a controlled activity; and
7 (b) the person is given notice of the direction; and
8 (c) the person contravenes the direction.

9 Maximum penalty: 60 penalty units.

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

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

13 **361 Authorisation to carry out rectification work**

- 14 (1) The planning and land authority may authorise a person
15 (an *authorised person*) to enter the place to which a direction under
16 section 359 (Direction to carry out rectification work) applies to
17 carry out the rectification work required by the notice under that
18 section if the work is not completed by the end of the period stated
19 in the notice.

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

22 (a) until the end of the period for making an application to the
23 AAT for the review of the decision to make the order to which
24 the rectification work relates; or

25 (b) if an application is made to the AAT for review of the decision
26 to make the order to which the rectification work relates—
27 unless the decision is upheld or the application is withdrawn.

1 **362 Obligation and powers of authorised people**

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

4 (2) The authorised person may do anything required to carry out the
5 rectification work including, for example, the following:

6 (a) construction work;

7 (b) alteration;

8 (c) demolition;

9 (d) remove earth, fixtures and construction material;

10 (e) remove anything else, like car bodies, vegetation and
11 machinery, that has to be removed to clean up a leasehold.

12 *Note* An example is part of the Act, is not exhaustive and may extend, but
13 does not limit, the meaning of the provision in which it appears (see
14 Legislation Act, s 126 and s 132).

15 (3) Anything removed from premises to carry out rectification work—

16 (a) is not required to be returned; and

17 (b) may be disposed of.

18 **363 Rectification work by authorised people—entry with**
19 **consent**

20 An authorised person may enter the place where the rectification
21 work is to be carried out only with the consent of an occupier.

1 **364 Liability for cost of rectification work**

2 The person who is required to comply with a direction under
3 section 359 (Direction to carry out rectification work) must pay to
4 the Territory the reasonable cost of any rectification work carried
5 out by an authorised person to which the direction related.

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

8 **365 Criteria for deferral of rectification work costs**

9 (1) The planning and land authority may, in writing, determine
10 circumstances when the payment of all or part of the cost of
11 rectification work carried out by an authorised person on a lessee's
12 leasehold may be deferred by the lessee.

13 (2) A determination is a notifiable instrument.

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

15 **366 Application for deferral of rectification work costs**

16 (1) A lessee who is required to pay the cost of rectification work carried
17 out on the lessee's leasehold may, in writing, apply to the planning
18 and land authority for the deferment of payment of all or part of the
19 cost of the rectification work.

20 (2) The application must state the grounds for the application.

21 **367 Deferral of rectification work costs**

22 (1) The planning and land authority may, in writing, declare that all or
23 part of the cost of rectification work payable by a lessee is deferred
24 if satisfied that a circumstance determined under section 365 (1)
25 exists in relation to the lessee.

26 *Note* Interest is payable on the deferred amount, see s 368.

1 (2) The planning and land authority may make a declaration under
2 subsection (1) on its own initiative or on application under
3 section 366.

4 (3) The declaration must state—

5 (a) the leasehold to which the declaration relates; and

6 (b) the amount of the cost of the rectification work deferred.

7 **368 Security for deferred rectification work costs**

8 (1) The planning and land authority must—

9 (a) lodge a copy of a declaration under section 367 with the
10 registrar-general for registration under the *Land Titles*
11 *Act 1925*; and

12 (b) give a copy of the declaration to the lessee of the leasehold to
13 which the declaration relates and anyone else who has an
14 interest in the leasehold.

15 (2) For the *Land Titles Act 1925*, section 104 (1) (Lodging of caveat),
16 the Territory is taken to be a person claiming an interest in the
17 leasehold to which the declaration relates.

18 (3) The registration under the *Land Titles Act 1925* of the copy of a
19 declaration under section 367 creates a charge over the leasehold to
20 which the declaration relates for—

21 (a) the amount stated in the declaration; and

22 (b) interest on the amount calculated on a daily basis at the interest
23 rate applying from time to time under the *Taxation*
24 *Administration Act 1999*, section 26 (Interest rate).

- 1 **369 Payment of deferred rectification work costs**
- 2 (1) If the full amount of the charge mentioned in section 368 (3) is paid
- 3 to the Territory, the planning and land authority must—
- 4 (a) revoke the declaration to which the charge relates; and
- 5 (b) lodge a copy of the revocation with the registrar-general for
- 6 registration under the *Land Titles Act 1925*; and
- 7 (c) give a copy of the revocation to the lessee of the charged
- 8 leasehold and anyone else who has an interest in the leasehold.
- 9 (2) The charge is discharged on the registration under the *Land Titles*
- 10 *Act 1925* of the copy of the revocation of the declaration.
- 11 (3) The lessees of a charged leasehold are liable separately and together
- 12 for the payment to the Territory of the full amount of the charge.
- 13 (4) A registered charge under this section does not give a power of sale
- 14 over the leasehold to which it relates.

1 **Part 11.5** **Prohibition notices**

2 **370** **Giving prohibition notices**

3 (1) This section applies if the planning and land authority believes, on
4 reasonable grounds, that the giving of a notice under this section
5 (a *prohibition notice*) is necessary—

6 (a) to prevent an entity starting, or continuing, to undertake
7 prohibited development; or

8 (b) to prevent an entity from continuing to undertake development
9 if—

10 (i) the entity has started to undertake the development; and

11 (ii) the development requires development approval; and

12 (iii) there is no development approval for the development; or

13 (c) to prevent an entity from continuing to undertake development
14 other than in accordance with the conditions of a development
15 approval if—

16 (i) the entity has started to undertake a development; and

17 (ii) there is development approval for the development; and

18 (iii) the development undertaken is not in accordance with the
19 conditions of the development approval.

20 (2) Also, this section applies to an activity under subsection (1) whether
21 or not—

22 (a) a controlled activity order has been made, or is proposed to be
23 made, in relation to the activity; or

24 (b) a proceeding for an offence against this chapter in relation to
25 the activity has begun or is about to begin.

- 1 (3) The planning and land authority may give a prohibition notice to
2 1 or both of the following:
- 3 (a) the lessee or occupier of a place to which the activity
4 mentioned in subsection (1) relates;
- 5 (b) anyone by whom or on whose behalf the activity—
- 6 (i) was, is being, or is to be, conducted; or
7 (ii) is likely to be conducted.
- 8 *Note* For how documents may be given, see the Legislation Act, pt 19.5.
- 9 (4) The prohibition notice must state—
- 10 (a) that it is a prohibition notice under this Act; and
11 (b) each person to whom it is directed; and
12 (c) that the notice takes effect when it is given to a person to
13 whom it is directed; and
14 (d) the grounds on which the notice is given; and
15 (e) the activity, and the place, in relation to which the notice
16 applies; and
17 (f) that the activity—
- 18 (i) must not be carried on by the person; or
19 (ii) must not be carried on by the person except in accordance
20 with the notice; and
21 (g) when the notice ends (including, for example, on the
22 happening of an event stated in the notice).
- 23 *Note* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 Legislation Act, s 126 and s 132).
- 26 (5) A prohibition notice takes effect when it is given to a person to
27 whom it is directed.

- 1 (6) To remove any doubt, 2 or more prohibition notices may be given in
2 relation to the same activity.

3 **371 Contravening prohibition notices**

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

11 Maximum penalty: 60 penalty units.

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

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

23 Maximum penalty: 60 penalty units.

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

1 **372 Ending prohibition notices**

2 (1) A prohibition notice remains in force until it ends in accordance
3 with this section.

4 (2) A prohibition notice ends on the earlier of the following:

5 (a) the notice ends in accordance with the notice;

6 (b) the notice is revoked.

7 **373 Application for revocation of prohibition notices**

8 (1) A person to whom a prohibition notice is directed may, in writing,
9 apply to the planning and land authority for the revocation of the
10 notice.

11 (2) The application must state the grounds on which the revocation of
12 the prohibition notice is sought.

13 (3) The planning and land authority may revoke the prohibition notice if
14 satisfied, on reasonable grounds, that the notice is no longer
15 necessary or appropriate.

1 **Part 11.6** **Injunctions, terminations and**
2 **ending leases and licences**

3 **374 Injunctions to restrain contravention of controlled activity**
4 **orders and prohibition notices**

- 5 (1) This section applies if a person (the *relevant person*) has engaged, is
6 engaging, or proposes to engage, in conduct that was, is, or would
7 be, a contravention of a controlled activity order or prohibition
8 notice.
- 9 (2) The planning and land authority or anyone else may apply to the
10 Supreme Court for an injunction.
- 11 (3) On application under subsection (2), the Supreme Court may grant
12 an injunction—
- 13 (a) restraining the relevant person from engaging in the conduct;
14 and
- 15 (b) if satisfied that it is desirable to do so—requiring the relevant
16 person to do anything.
- 17 (4) The Supreme Court may grant an injunction restraining a relevant
18 person from engaging in conduct of a particular kind—
- 19 (a) if satisfied that the person has engaged in conduct of that kind,
20 whether or not it appears to the court that the person intends to
21 engage again, or to continue to engage, in conduct of that kind;
22 or
- 23 (b) if it appears to the court that, if an injunction is not granted, it
24 is likely the person will engage in conduct of that kind,
25 whether or not the person has previously engaged in conduct of
26 that kind and whether or not there is an imminent danger of
27 substantial damage to someone else if the person engages in
28 conduct of that kind.

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- 1 (5) This section applies whether or not a proceeding for an offence
2 against this chapter has begun or is about to begin.

3 **375 Termination of leases**

- 4 (1) This section applies if—
5 (a) a lessee contravenes this chapter or the lease; and
6 (b) the planning and land authority has complied with section 377
7 in relation to the lessee.
- 8 (2) The planning and land authority may, by written notice (a
9 *termination notice*) given to the lessee, terminate the lease.
10 *Note* For how documents may be given, see the Legislation Act, pt 19.5.
- 11 (3) A termination notice takes effect 10 working days after the day the
12 notice is given.
- 13 (4) At the same time as, or as soon as practicable after, the termination
14 notice is given to the lessee, the planning and land authority must
15 give a copy of the termination notice to—
16 (a) the registrar-general; and
17 (b) any person having an interest in the land comprised in the lease
18 that is registered under the *Land Titles Act 1925*.
- 19 (5) The validity of the termination of a lease is not affected by a failure
20 to comply with subsection (4).

21 **376 Termination of licences**

- 22 (1) This section applies if—
23 (a) a person who occupies territory land under a licence from the
24 Commonwealth or the Territory contravenes this chapter or the
25 licence; and

1 (b) the planning and land authority has complied with section 377
2 in relation to the licensee.

3 (2) The planning and land authority may, by written notice given to the
4 licensee, terminate the licence.

5 (3) A notice under subsection (2) takes effect 5 working days after the
6 day the notice is served.

7 **377 Notice of termination**

8 The planning and land authority must not terminate a lease or a
9 licence under this part unless it has—

10 (a) by written notice given to the lessee or licensee—

11 (i) informed the lessee or licensee that it is considering
12 terminating the lease or licence; and

13 (ii) stated the grounds on which it is considering taking that
14 action; and

15 (iii) invited the lessee or licensee to tell the authority in
16 writing not later than 15 working days after the day the
17 lessee or licensee receives the notice why the lessee or
18 licensee considers that the lease or licence should not be
19 terminated; and

20 (b) for the termination of a lease—given a copy of the notice under
21 paragraph (a) to each person with a registered interest in the
22 lease; and

23 (c) taken into account any reasons for not terminating the lease or
24 licence given to the authority by the lessee or licensee in
25 accordance with the notice served on the lessee or licensee
26 under paragraph (a).

1 **Part 11.7** **Controlled activities—**
2 **miscellaneous**

3 **378** **Victimisation etc**

4 (1) A person (the *first person*) commits an offence if the first person
5 causes or threatens to cause a detriment to someone else (the *other*
6 *person*) because—

7 (a) the other person has made—

8 (i) a complaint under part 11.2; or

9 (ii) an application for a controlled activity order under part
10 11.3; or

11 (b) the first person believes that the other person intends to do
12 something mentioned in paragraph (a).

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

15 (2) A person commits an offence if the person threatens or intimidates
16 someone else with the intention of causing the other person—

17 (a) not to make—

18 (i) a complaint under part 11.2; or

19 (ii) an application under part 11.3; or

20 (b) to withdraw a complaint made under part 11.2.

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

1 **Chapter 12 Enforcement**

2 *Notes to ch 12*

3 Fees may be determined under s 415 for provisions of this chapter.

4 If a form is approved under s 416 for a provision of this chapter, the form must be
5 used.

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

8 **Part 12.1 General**

9 **379 Definitions—ch 12**

10 In this chapter:

11 ***connected***—a thing is ***connected*** with an offence if—

- 12 (a) the offence has been committed in relation to it; or
13 (b) it will provide evidence of the commission of the offence; or
14 (c) it was used, is being used, or is intended to be used, to commit
15 the offence.

16 ***occupier***, of premises, includes—

- 17 (a) a person believed, on reasonable grounds, to be an occupier of
18 the premises; and
19 (b) a person apparently in charge of the premises.

20 ***offence*** includes an offence that there are reasonable grounds for
21 believing has been, is being, or will be, committed.

22 ***premises*** includes land.

1 **Part 12.2 Inspectors**

2 **380 Appointment of inspectors**

3 The planning and land authority may appoint a person as an
4 inspector for this part.

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

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

10 **381 Identity cards**

11 (1) The planning and land authority must give a person appointed as an
12 inspector an identity card stating the person's name and that the
13 person is an inspector.

14 (2) The identity card must show—

- 15 (a) a recent photograph of the person; and
16 (b) the card's date of issue and expiry; and
17 (c) anything else prescribed by regulation.

18 (3) A person commits an offence if—

- 19 (a) the person stops being an inspector; and
20 (b) the person does not return the person's identity card to the
21 planning and land authority as soon as practicable, but no later
22 than 5 working days after the day the person stops being an
23 inspector.

24 Maximum penalty: 1 penalty unit.

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

1 Part 12.3 Powers of inspectors

2 *Note to pt 12.3*

3 An inspector, and anyone assisting the inspector, must take reasonable steps to
4 minimise damage when exercising a function under this chapter (see s 406). The
5 Territory may be liable to pay compensation for any damage caused (see s 407).

6 **382 Power to enter premises**

7 (1) For this Act, an inspector may—

8 (a) at any reasonable time, enter premises that the public is entitled
9 to use or that are open to the public (whether or not on
10 payment of money); or

11 (b) at any time, enter premises with the occupier's consent; or

12 (c) enter premises in accordance with a search warrant.

13 (2) However, subsection (1) (a) does not authorise entry into a part of
14 premises that is being used only for residential purposes.

15 (3) An inspector may, without the consent of the occupier of premises,
16 enter land around the premises to ask for consent to enter the
17 premises.

18 (4) To remove any doubt—

19 (a) an inspector may enter premises under subsection (1) without
20 payment of an entry fee or other charge; and

21 (b) for subsection (3), it does not matter whether someone is on the
22 premises or not when the inspector makes the announcement.

23 **383 Production of identity card**

24 An inspector must not remain at premises entered under this part if
25 the inspector does not produce his or her identity card when asked
26 by the occupier.

- 1 **384 Consent to entry**
- 2 (1) When seeking the consent of an occupier of premises to enter
- 3 premises under section 382 (1) (b), an inspector must—
- 4 (a) produce his or her identity card; and
- 5 (b) tell the occupier—
- 6 (i) the purpose of the entry; and
- 7 (ii) that the inspector has the power to seize things; and
- 8 (iii) that anything found and seized under this part may be
- 9 used in evidence in court; and
- 10 (iv) that consent may be refused.
- 11 (2) If the occupier consents, the inspector must ask the occupier to sign
- 12 a written acknowledgment (an *acknowledgment of consent*)—
- 13 (a) that the occupier was told—
- 14 (i) the purpose of the entry; and
- 15 (ii) that anything found and seized under this part may be
- 16 used in evidence in court; and
- 17 (iii) that consent may be refused; and
- 18 (b) that the occupier consented to the entry; and
- 19 (c) stating the time and date when consent was given.
- 20 (3) If the occupier signs an acknowledgment of consent, the inspector
- 21 must immediately give a copy to the occupier.
- 22 (4) A court must find that the occupier did not consent to entry to the
- 23 premises by the inspector under this part if—
- 24 (a) the question arises in a proceeding in the court whether the
- 25 occupier consented to the entry; and

1 (b) an acknowledgment of consent for the entry is not produced in
2 evidence; and

3 (c) it is not proved that the occupier consented to the entry.

4 **385 General powers on entry to premises**

5 (1) An inspector who enters premises under this part may, for this Act,
6 do 1 or more of the following in relation to the premises or anything
7 at the premises:

8 (a) inspect or examine;

9 (b) take measurements or conduct tests;

10 (c) take samples;

11 (d) take photographs, films, or audio, video or other recordings;

12 (e) require the occupier, or anyone at the premises, to give the
13 inspector reasonable help to exercise a power under this part.

14 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
15 privilege against selfincrimination and client legal privilege.

16 (2) A person must take all reasonable steps to comply with a
17 requirement made of the person under subsection (1) (e).

18 Maximum penalty: 50 penalty units.

19 **386 Power to require name and address**

20 (1) An inspector may require a person to state the person's name and
21 home address if the inspector believes, on reasonable grounds, that
22 the person is committing or has just committed an offence against
23 this Act.

24 *Note* A reference to an Act includes a reference to the statutory instruments
25 made or in force under the Act, including any regulation (see
26 Legislation Act, s 104).

Section 387

- 1 (2) The inspector must tell the person the reason for the requirement
2 and, as soon as practicable, record the reason.
- 3 (3) The person may ask the inspector to produce his or her identity card
4 for inspection by the person.
- 5 (4) A person must comply with a requirement made of the person under
6 subsection (1) if the inspector—
- 7 (a) tells the person the reason for the requirement; and
- 8 (b) complies with any request made by the person under
9 subsection (3).
- 10 Maximum penalty: 10 penalty units.
- 11 (5) An offence against this section is a strict liability offence.
- 12 (6) In this section:
- 13 *home address*, of a person, means the address of the place where the
14 person usually lives.

15 **387 Power to seize things**

- 16 (1) An inspector who enters premises under this part with the occupier's
17 consent may seize anything at the premises if—
- 18 (a) the inspector is satisfied, on reasonable grounds, that the thing
19 is connected with an offence against this Act; and
- 20 (b) seizure of the thing is consistent with the purpose of the entry
21 told to the occupier when seeking the occupier's consent.
- 22 (2) An inspector who enters premises under a warrant under this part
23 may seize anything at the premises that the inspector is authorised to
24 seize under the warrant.

- 1 (3) An inspector who enters premises under this part (whether with the
2 occupier's consent, under a warrant or otherwise) may seize
3 anything at the premises if satisfied, on reasonable grounds, that—
4 (a) the thing is connected with an offence against this Act; and
5 (b) the seizure is necessary to prevent the thing from being—
6 (i) concealed, lost or destroyed; or
7 (ii) used to commit, continue or repeat the offence.
8 (4) Having seized a thing, an inspector may—
9 (a) remove the thing from the premises where it was seized (the
10 *place of seizure*) to another place; or
11 (b) leave the thing at the place of seizure but restrict access to it.
12 (5) A person commits an offence if—
13 (a) the person interferes with a seized thing, or anything
14 containing a seized thing, to which access has been restricted
15 under subsection (4); and
16 (b) the person does not have an inspector's approval to interfere
17 with the thing.
18 Maximum penalty: 50 penalty units.
19 (6) An offence against this section is a strict liability offence.

1 **Part 12.4** **Information requirements**

2 **388** **Information requirements**

- 3 (1) This section applies if the planning and land authority suspects on
4 reasonable grounds that a person—
- 5 (a) has knowledge of information (the *required information*)
6 reasonably required by the authority for the administration or
7 enforcement of this Act; or
- 8 (b) has possession or control of a document containing the
9 required information.
- 10 (2) The planning and land authority may give the person a notice
11 (an *information requirement*) requiring the person to give the
12 information, or produce the document, to the authority.
- 13 (3) The information requirement must be in writing and must include
14 details of the following:
- 15 (a) the identity of the person to whom it is given;
16 (b) why the information is required;
17 (c) the time by which the notice must be complied with;
18 (d) the operation of section 390.
- 19 (4) A person does not incur any civil or criminal liability only because
20 the person gives information, or produces a document, to the
21 planning and land authority in accordance with an information
22 requirement.

1 **389** **Treatment of documents provided under information**
2 **requirement**

3 (1) The planning and land authority must return a document produced
4 in accordance with an information requirement to the person who
5 produced the document as soon as practicable.

6 (2) To remove any doubt, before returning the document, the planning
7 and land authority may make copies of, or take extracts from, the
8 document.

9 **390** **Contravention of information requirements**

10 A person commits an offence if the person intentionally contravenes
11 a requirement of an information requirement.

12 Maximum penalty: 100 penalty units.

13 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
14 privilege against selfincrimination and legal professional privilege.

1 **Part 12.5 Search warrants**

2 **391 Warrants generally**

- 3 (1) An inspector may apply to a magistrate for a warrant to enter
4 premises.
- 5 (2) The application must be sworn and state the grounds on which the
6 warrant is sought.
- 7 (3) The magistrate may refuse to consider the application until the
8 inspector gives the magistrate all the information the magistrate
9 requires about the application in the way the magistrate requires.
- 10 (4) The magistrate may issue a warrant only if satisfied there are
11 reasonable grounds for suspecting—
- 12 (a) there is a particular thing or activity connected with an offence
13 against this Act; and
- 14 (b) the thing or activity—
- 15 (i) is, or is being engaged in, at the premises; or
- 16 (ii) may be, or may be engaged in, at the premises within the
17 next 14 days.
- 18 (5) The warrant must state—
- 19 (a) that an inspector may, with any necessary assistance and force,
20 enter the premises and exercise the inspector's powers under
21 this part; and
- 22 (b) the offence for which the warrant is issued; and
- 23 (c) the things that may be seized under the warrant; and

- 1 (d) the hours when the premises may be entered; and
2 (e) the date, within 14 days after the day of the warrant's issue, the
3 warrant ends.

4 **392 Warrants—application made other than in person**

- 5 (1) An inspector may apply for a warrant by phone, fax, radio or other
6 form of communication if the inspector considers it necessary
7 because of—
8 (a) urgent circumstances; or
9 (b) other special circumstances.
- 10 (2) Before applying for the warrant, the inspector must prepare an
11 application stating the grounds on which the warrant is sought.
- 12 (3) The inspector may apply for the warrant before the application is
13 sworn.
- 14 (4) After issuing the warrant, the magistrate must immediately fax a
15 copy to the inspector if it is practicable to do so.
- 16 (5) If it is not practicable to fax a copy to the inspector—
17 (a) the magistrate must—
18 (i) tell the inspector the terms of the warrant; and
19 (ii) tell the inspector the date and time the warrant was
20 issued; and
21 (b) the inspector must complete a form of warrant (the *warrant*
22 *form*) and write on it—
23 (i) the magistrate's name; and
24 (ii) the date and time the magistrate issued the warrant; and
25 (iii) the warrant's terms.

- 1 (6) The faxed copy of the warrant, or the warrant form properly
2 completed by the inspector, authorises the entry and the exercise of
3 the inspector's powers under this part.
- 4 (7) The inspector must, at the first reasonable opportunity, send to the
5 magistrate—
- 6 (a) the sworn application; and
7 (b) if the inspector completed a warrant form—the completed
8 warrant form.
- 9 (8) On receiving the documents, the magistrate must attach them to the
10 warrant.
- 11 (9) A court must find that a power exercised by the inspector was not
12 authorised by a warrant under this section if—
- 13 (a) the question arises in a proceeding in the court whether the
14 exercise of power was authorised by a warrant; and
15 (b) the warrant is not produced in evidence; and
16 (c) it is not proved that the exercise of power was authorised by a
17 warrant under this section.

18 **393 Search warrants—announcement before entry**

- 19 (1) An inspector must, before anyone enters premises under a search
20 warrant—
- 21 (a) announce that the inspector is authorised to enter the premises;
22 and
23 (b) give anyone at the premises an opportunity to allow entry to
24 the premises; and
25 (c) if the occupier of the premises, or someone else who
26 apparently represents the occupier, is present at the premises—
27 identify himself or herself to the person.

- 1 (2) The inspector is not required to comply with subsection (1) if the
2 inspector believes, on reasonable grounds, that immediate entry to
3 the premises is required to ensure—
- 4 (a) the safety of anyone (including the inspector or any person
5 assisting); or
- 6 (b) that the effective execution of the warrant is not frustrated.

7 **394 Details of search warrant to be given to occupier etc**

8 If the occupier of premises, or someone else who apparently
9 represents the occupier, is present at the premises while a search
10 warrant is being executed, the inspector or a person assisting must
11 make available to the person—

- 12 (a) a copy of the warrant; and
- 13 (b) a document setting out the rights and obligations of the person.

14 **395 Occupier entitled to be present during search etc**

15 (1) If the occupier of premises, or someone else who apparently
16 represents the occupier, is present at the premises while a search
17 warrant is being executed, the person is entitled to observe the
18 search being conducted.

19 (2) However, the person is not entitled to observe the search if—

- 20 (a) to do so would impede the search; or
- 21 (b) the person is under arrest, and allowing the person to observe
22 the search being conducted would interfere with the objectives
23 of the search.

24 (3) This section does not prevent 2 or more areas of the premises being
25 searched at the same time.

1 **Part 12.6** **Return and forfeiture of things**
2 **seized**

3 **396** **Receipt for things seized**

- 4 (1) As soon as practicable after an inspector seizes a thing under this
5 part, the inspector must give a receipt for it to the person from
6 whom it was seized.
- 7 (2) If, for any reason, it is not practicable to comply with subsection (1),
8 the inspector must leave the receipt, secured conspicuously, at the
9 place of seizure under section 387 (Power to seize things).
- 10 (3) A receipt under this section must include the following:
- 11 (a) a description of the thing seized;
- 12 (b) an explanation of why the thing was seized;
- 13 (c) the inspector's name, and how to contact the inspector;
- 14 (d) if the thing is moved from the premises where it is seized—
15 where the thing is to be taken.

16 **397** **Moving things to another place for examination or**
17 **processing under search warrant**

- 18 (1) A thing found at premises entered under a search warrant may be
19 moved to another place for examination or processing to decide
20 whether it may be seized under the warrant if—
- 21 (a) both of the following apply:
- 22 (i) there are reasonable grounds for believing that the thing is
23 or contains something to which the warrant relates;

- 1 (ii) it is significantly more practicable to do so having regard
2 to the timeliness and cost of examining or processing the
3 thing at another place and the availability of expert
4 assistance; or
- 5 (b) the occupier of the premises agrees in writing.
- 6 (2) The thing may be moved to another place for examination or
7 processing for no longer than 72 hours.
- 8 (3) An inspector may apply to a magistrate for an extension of time if
9 the inspector believes, on reasonable grounds, that the thing cannot
10 be examined or processed within 72 hours.
- 11 (4) The inspector must give notice of the application to the occupier of
12 the premises, and the occupier is entitled to be heard on the
13 application.
- 14 (5) If a thing is moved to another place under this section, the inspector
15 must, if practicable—
- 16 (a) tell the occupier of the premises the address of the place where,
17 and time when, the examination or processing will be carried
18 out; and
- 19 (b) allow the occupier or the occupier's representative to be
20 present during the examination or processing.
- 21 (6) The provisions of this part relating to the issue of search warrants
22 apply, with any necessary changes, to the giving of an extension
23 under this section.

24 **398 Access to things seized**

25 A person who would, apart from the seizure, be entitled to inspect a
26 thing seized under this part may—

- 27 (a) inspect it; and
- 28 (b) if it is a document—take extracts from it or make copies of it.

- 1 **399 Return of things seized**
- 2 (1) A thing seized under this part must be returned to its owner, or
- 3 reasonable compensation must be paid by the Territory to the owner
- 4 for the loss of the thing if—
- 5 (a) an infringement notice for an offence relating to the thing is
- 6 not served on the owner within 1 year after the day of the
- 7 seizure and—
- 8 (i) a prosecution for an offence relating to the thing is not
- 9 begun within the 1-year period; or
- 10 (ii) a prosecution for an offence relating to the thing is begun
- 11 within the 1-year period but the court does not find the
- 12 offence proved; or
- 13 (b) an infringement notice for an offence relating to the thing is
- 14 served on the owner within 1 year after the day of the seizure,
- 15 the infringement notice is withdrawn and—
- 16 (i) a prosecution for an offence relating to the thing is not
- 17 begun within the 1-year period; or
- 18 (ii) a prosecution for an offence relating to the thing is so
- 19 begun but the court does not find the offence proved; or
- 20 (c) an infringement notice for an offence relating to the thing is
- 21 served on the owner and not withdrawn within 1 year after the
- 22 day of the seizure, liability for the offence is disputed in
- 23 accordance with the *Magistrates Court Act 1930*, section 132
- 24 and—
- 25 (i) an information is not laid in the Magistrates Court against
- 26 the person for the offence within 60 days after the day
- 27 notice is given under that section that liability is disputed;
- 28 or

- 1 (ii) an information is laid in the Magistrates Court against the
2 person for the offence within the 60-day period, but the
3 Magistrates Court does not find the offence proved.
- 4 (2) If anything seized under this part is not required to be returned or
5 reasonable compensation is not required to be paid under
6 subsection (1), the thing—
- 7 (a) is forfeited to the Territory; and
- 8 (b) may be sold, destroyed or otherwise disposed of as the chief
9 planning executive directs.

1 **Chapter 13 Review of decisions**

2 *Notes to ch 13*

3 Fees may be determined under s 415 for provisions of this chapter.

4 If a form is approved under s 416 for a provision of this chapter, the form must be
5 used.

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

8 **400 Definitions—ch 13**

9 In this chapter:

10 *decision-maker*, for a reviewable decision—each person mentioned
11 in schedule 1, column 3 in relation to a reviewable decision is a
12 *decision-maker* for the decision.

13 *eligible entity*, for a reviewable decision—each entity mentioned in
14 schedule 1, column 4 in relation to a reviewable decision is an
15 *eligible entity* for the decision.

16 *interested person*, for a reviewable decision, means a person
17 mentioned in schedule 1, column 5 for the decision.

18 *reviewable decision*—each decision mentioned in schedule 1,
19 column 2 is a *reviewable decision*.

20 **401 AAT review—general**

21 (1) An eligible person for a reviewable decision may apply to the AAT
22 for review of the decision.

- 1 (2) If a decision-maker makes a reviewable decision, the
2 decision-maker must give written notice to—
- 3 (a) each eligible person for the decision; and
4 (b) each interested person for the decision.
- 5 (3) The notice under subsection (2) must comply with the requirements
6 of the code of practice in force under the *Administrative Appeals*
7 *Tribunal Act 1989*, section 25B (1).

8 **402 AAT review—people who made representations etc**

- 9 (1) This section applies to a reviewable decision in relation to a
10 development application if the person applying to the AAT for
11 review is not the applicant for the development application.
- 12 (2) The application for review must be made not later than 4 weeks
13 after the day the reviewable decision is made.
- 14 (3) The period for making the application for review may not be
15 extended under the *Administrative Appeals Tribunal Act 1989*.

16 **403 Challenge to validity of Ministerial decisions on**
17 **development applications**

- 18 (1) The validity of a decision made by the Minister under section 158
19 (Deciding development applications) may not be questioned in any
20 legal proceeding other than a proceeding begun not later than
21 28 days after the date of the decision.
- 22 (2) In this section:
23 *legal proceeding* does not include an application to the
24 administrative appeals tribunal.

1 **Chapter 14** **Miscellaneous**

2 *Notes to ch 14*

3 Fees may be determined under s 415 for provisions of this chapter.

4 If a form is approved under s 416 for a provision of this chapter, the form must be
5 used.

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

8 **404** **Restrictions on public availability—comments,**
9 **applications, representations and proposals**

10 (1) This section applies to—

11 (a) a person who makes consultation comments on a draft plan
12 variation; or

13 (b) an applicant for development approval; or

14 (c) a person who makes a representation about a development
15 application; or

16 (d) a person who makes a representation about a draft EIS; or

17 (e) the proponent of a development proposal who gives the
18 planning and land authority a revised EIS under section 214.

19 (2) In this section:

20 ***relevant document*** means—

21 (a) in relation to a person who makes consultation comments on a
22 draft plan variation—the consultation comments; or

23 (b) in relation to an applicant for development approval—the
24 application for development approval; or

-
- 1 (c) in relation to a person who makes a representation about a
2 development application—the representation; or
- 3 (d) in relation to a person who makes a representation about a draft
4 EIS—the representation; or
- 5 (e) in relation to the proponent of a development proposal who
6 gives the planning and land authority a revised EIS under
7 section 214—the EIS.
- 8 (3) A person to whom this section applies may apply (by *exclusion*
9 *application*) in writing to the planning and land authority for part of
10 the relevant document to be excluded from being made available for
11 public inspection.
- 12 (4) The planning and land authority may approve or refuse to approve
13 the exclusion application.
- 14 (5) However, the planning and land authority must not approve the
15 exclusion application unless satisfied that the part of the relevant
16 document to which the exclusion application relates contains
17 information—
- 18 (a) the publication of which would disclose a trade secret; or
19 (b) the publication of which would, or could reasonably be
20 expected to—
- 21 (i) endanger the life or physical safety of any person; or
22 (ii) lead to damage to, or theft of, property.
- 23 (6) If the planning and land authority approves an exclusion application
24 in relation to part of the relevant document, the part must not be
25 made available to the public.

- 1 (7) If part of the relevant document is excluded from copies of the
2 relevant document made available for public inspection, each copy
3 must include a statement to the effect that an unmentioned part of
4 the relevant document has been excluded to protect the
5 confidentiality of information included in the part.

6 **405 Restrictions on public availability—security**

- 7 (1) This section applies if a justice minister certifies in writing given to
8 the planning and land authority that the publication of part (the
9 *concerning part*) of a relevant document might—
10 (a) jeopardise national security; or
11 (b) expose staff of a security organisation to risk of injury; or
12 (c) expose the public to risk of injury; or
13 (d) expose property to risk of damage.
14 (2) The concerning part of the relevant document must not be made
15 available to the public.
16 (3) Each copy of the relevant document made public must include a
17 statement to the effect that an unmentioned part of the document has
18 been excluded under this section.
19 (4) For this section, something *jeopardises national security* if it
20 jeopardises the operations of a security organisation.
21 (5) In this section:
22 *justice minister* means—
23 (a) the Minister responsible for the administration of justice; or
24 (b) the Commonwealth Attorney-General.

- 1 ***relevant document***—each of the following is a ***relevant document***:
- 2 (a) consultation comments on a draft plan variation;
- 3 (b) an application for development approval;
- 4 (c) a representation about a development application;
- 5 (d) a representation about a draft EIS;
- 6 (e) an EIS.
- 7 ***security organisation***—each of the following is a security
- 8 organisation:
- 9 (a) the Australian Federal Police;
- 10 (b) the Australian Security Intelligence Organisation;
- 11 (c) the Australian Secret Intelligence Service;
- 12 (d) the police force or service of a State;
- 13 (e) an entity established under a law of a State to conduct criminal
- 14 investigations or inquiries;
- 15 (f) any other entity prescribed by regulation.

16 **406 Damage etc to be minimised**

17 (1) In this section:

18 ***function*** means—

- 19 (a) for an authorised person—a function under chapter 11; or
- 20 (b) for an inspector—a function under chapter 12.

21 ***official*** means—

- 22 (a) an authorised person; or
- 23 (b) an inspector.

- 1 (2) In the exercise, or purported exercise, by an official of a function,
2 the official must take all reasonable steps to ensure that the official,
3 and any person assisting the official, causes as little inconvenience,
4 detriment and damage as practicable.
- 5 (3) If an official, or person assisting an official, damages anything in the
6 exercise or purported exercise of a function, the official must give
7 written notice of the particulars of the damage to the person the
8 official believes, on reasonable grounds, is the owner of the thing.
- 9 (4) If the damage happens at premises entered under chapter 12 in the
10 absence of the occupier, the notice may be given by leaving it,
11 secured conspicuously, at the premises.

12 **407 Compensation for exercise of enforcement powers**

- 13 (1) A person may claim compensation from the Territory if the person
14 suffers loss or expense because of the exercise, or purported
15 exercise, of a function by an official or person assisting an official.
- 16 (2) Compensation may be claimed and ordered—
- 17 (a) in a proceeding for compensation brought in a court of
18 competent jurisdiction; or
- 19 (b) in a proceeding for an offence against this Act brought against
20 the person making the claim for compensation.
- 21 (3) A court may order the payment of reasonable compensation for the
22 loss or expense only if satisfied it is just to make the order in the
23 circumstances of the particular case.

- 1 (4) A regulation may prescribe matters that may, must or must not be
2 taken into account by the court in considering whether it is just to
3 make the order.

4 **Examples of what may be prescribed**

- 5 1 compensation is not payable for actions of authorised people that are
6 unavoidable, like demolishing an unlawful structure if the rectification notice
7 requires the demolition
8 2 compensation is payable if the damage is reasonably avoidable, like the
9 accidental breaking of a window

10 *Note* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 Legislation Act, s 126 and s 132).

- 13 (5) In this section:

14 *function*—see section 406 (1).

15 *official*—see section 406 (1).

16 **408 Evidence of ending of lease**

- 17 (1) The planning and land authority may certify in writing that a lease
18 mentioned in the certificate has ended.
19 (2) The certificate is evidence of the matter it states.

20 **409 Rights to extract minerals**

- 21 (1) The planning and land authority may, by a lease or licence, grant a
22 person the right to extract minerals from stated territory land.
23 (2) The provisions of the lease or licence are the provisions agreed
24 between the parties.

1 **410 Secrecy**

2 (1) In this section:

3 *court* includes a tribunal, authority or person having power to
4 require the production of documents or the answering of questions.

5 *divulge* includes communicate.

6 *person to whom this section applies* means a person who—

7 (a) is or has been—

8 (i) the chief planning executive; or

9 (ii) a member of staff of the planning and land authority; or

10 (iii) a member of the staff of the commission; or

11 (b) exercises, or has exercised, a function under this Act.

12 *produce* includes allow access to.

13 *protected information* means information about a person that is
14 disclosed to, or obtained by, a person to whom this section applies
15 because of the exercise of a function under this Act by the person or
16 someone else.

17 (2) A person to whom this section applies commits an offence if—

18 (a) the person—

19 (i) makes a record of protected information about someone
20 else; and

21 (ii) is reckless about whether the information is protected
22 information about someone else; or

23 (b) the person—

24 (i) does something that divulges protected information about
25 someone else; and

- 1 (ii) is reckless about whether—
- 2 (A) the information is protected information about
- 3 someone else; and
- 4 (B) doing the thing would result in the information being
- 5 divulged to someone else.
- 6 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 7 both.
- 8 (3) Subsection (2) does not apply if the record is made, or the
- 9 information is divulged—
- 10 (a) under this Act or another territory law; or
- 11 (b) in relation to the exercise of a function, as a person to whom
- 12 this section applies, under this Act or another territory law; or
- 13 (c) in a court proceeding.
- 14 (4) Subsection (2) does not apply to the divulging of protected
- 15 information about someone with the person's consent.

16 **411 Meaning of *material detriment*—Act**

- 17 (1) In this Act:
- 18 *material detriment*, in relation to land—an entity suffers *material*
- 19 *detriment* in relation to land because of a decision if—
- 20 (a) the decision has, or is likely to have, an adverse impact on the
- 21 entity's use or enjoyment of the land; or
- 22 (b) for an entity that has objects or purposes—the decision relates
- 23 to a matter included in the entity's objects or purposes.

- 1 (2) However, an entity does not suffer material detriment in relation to
2 land because of a decision only because the decision increases, or is
3 likely to increase, direct or indirect competition with a business of
4 the entity or an associate of the entity.

5 *Note 1 Associate*—see dict.

6 *Note 2 Material detriment* is used in sch 1.

7 **412 Ministerial guidelines**

- 8 (1) The Minister may approve guidelines for the exercise of any power
9 by the Minister under this Act.

- 10 (2) The Minister may, but need not, consider advice from the planning
11 and land authority before approving guidelines.

- 12 (3) Guidelines are a notifiable instrument.

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

14 **413 Expiry of notifiable instruments**

- 15 (1) This section applies to a notifiable instrument under any of the
16 following provisions:

- 17 • section 62
18 • section 67
19 • section 69
20 • section 75
21 • section 81
22 • section 83
23 • section 101.

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

1 **414 Declaration of authority website**

2 (1) The Minister may declare a website to be the planning and land
3 authority website.

4 (2) A declaration is a notifiable instrument.

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

6 **415 Determination of fees**

7 (1) The Minister may, in writing, determine fees for this Act.

8 *Note* The Legislation Act contains provisions about the making of
9 determinations and regulations relating to fees (see pt 6.3).

10 (2) A determination is a disallowable instrument.

11 *Note* A disallowable instrument must be notified, and presented to the
12 Legislative Assembly, under the Legislation Act.

13 **416 Approved forms**

14 (1) The planning and land authority may, in writing, approve forms for
15 this Act.

16 (2) If the planning and land authority approves a form for a particular
17 purpose, the approved form must be used for that purpose.

18 *Note* For other provisions about forms, see the Legislation Act, s 255.

19 (3) An approved form is a notifiable instrument.

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

21 **417 Regulation-making power**

22 (1) The Executive may make regulations for this Act.

23 *Note* Regulations must be notified, and presented to the Legislative
24 Assembly, under the Legislation Act.

- 1 (2) A regulation may make provision in relation to the following:
- 2 (a) environmental impact statements;
- 3 (b) if this Act does not prescribe when a development approval
4 takes effect—when the development approval takes effect;
- 5 (c) the list of consultants for section 206;
- 6 (d) inquiry panels;
- 7 (e) planning reports;
- 8 (f) strategic environmental assessments.
- 9 **Examples of what may be prescribed for par (c)**
- 10 1 selection process for experts to be inquiry panel members
- 11 2 establishment of register of experts for inquiry panels
- 12 3 appointment of chair for inquiry panel
- 13 4 procedures for dealing with absences or departures from inquiry panels
- 14 5 procedures for running inquiry panels, including the quorum, holding of
15 hearings, conflict of interest and decision-making
- 16 *Note* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 Legislation Act, s 126 and s 132).
- 19 (3) A regulation may also prescribe offences for contraventions of the
20 regulations and prescribe maximum penalties of not more than
21 10 penalty units for offences against a regulation.

1 **Chapter 15** **Transitional**

2 **Part 15.1** **Transitional—general**

3 **418** **Definitions—ch 15**

4 In this chapter:

5 *commencement day* means the day this Act commences.

6 *repealed Act* means the *Land (Planning and Environment)*
7 *Act 1991*.

8 **419** **Repeals**

9 (1) The following legislation is repealed:

10 (a) the *Land (Planning and Environment) Act 1991* A1991-100;

11 (b) the *Land (Planning and Environment) (Bushfire Emergency)*
12 *Regulation 2003* SL2003-4;

13 (c) the *Land (Planning and Environment) Regulation 1992*
14 SL1992-5;

15 (d) the *Magistrates Court (Land Planning and Environment*
16 *Infringement Notices) Regulation 2003* SL2003-27;

17 (e) the *Planning and Land Act 2002* A2002-55;

18 (f) the *Planning and Land Regulation 2003* SL2003-16.

19 (2) All other legislative instruments under the *Land (Planning and*
20 *Environment) Act 1991* are repealed.

1 **420 Transitional regulations**

- 2 (1) A regulation may prescribe transitional matters necessary or
3 convenient to be prescribed because of the enactment of the
4 *Planning and Development (Consequential Amendments) Act 2007*
5 or this Act.
- 6 (2) A regulation may modify this chapter to make provision in relation
7 to anything that, in the Executive's opinion, is not, or is not
8 adequately or appropriately, dealt with in this chapter.
- 9 (3) A regulation under subsection (2) has effect despite anything
10 elsewhere in this Act.

11 **421 Transitional effect—Legislation Act, s 88**

12 This chapter is a law to which the Legislation Act, section 88
13 (Repeal does not end effect of transitional laws etc) applies.

14 **422 Expiry—ch 15**

15 This chapter expires 2 years after commencement day.

1 **Part 15.2** **Transitional—territory plan**

2 **423** **Transitional—territory plan**

- 3 (1) The planning and land authority must, in consultation with the
4 national capital authority and the public, prepare the territory plan.

5 *Note 1* For what is required for community consultation, see s 424.

6 *Note 2* For requirement to report on consultation with national capital
7 authority, see s 425.

8 *Note 3* The territory plan is a notifiable instrument (see s 46 (1)).

- 9 (2) The Legislative Assembly may, by motion, approve the territory
10 plan as notified under the Legislation Act.

- 11 (3) The approved territory plan commences—

12 (a) if it is approved on or before commencement day—on the
13 commencement day; or

14 (b) if it is approved after commencement day—the day after it is
15 approved.

- 16 (4) To remove any doubt, in subsection (1), *consultation* includes
17 consultation occurring before the commencement of this section.

- 18 (5) In this section:

19 *commencement day* means the day section 45 (Territory plan)
20 commences.

21 **424** **Transitional—public consultation on territory plan**

- 22 (1) For section 423, the planning and land authority prepares a territory
23 plan in consultation with the public if, as part of developing the
24 territory plan, the authority—

25 (a) publishes an outline of the proposed territory plan; and

- 1 (b) conducts information sessions about the proposed territory
2 plan; and
- 3 (c) gives public notice that written comments may be made on the
4 proposed territory plan with a stated time; and
- 5 (d) considers any comments provided in accordance with the
6 notice.
- 7 *Note* Consultation includes consultation occurring before the commencement
8 of s 423 (see s 423 (4)).
- 9 (2) To remove any doubt, subsection (1) does not limit the ways the
10 planning and land authority may consult the public about the
11 territory plan.

12 **425 Transitional—consultation with national capital authority**

- 13 (1) The planning and land authority must give a written report to the
14 Executive about the authority's consultation with the national
15 capital authority under section 423.
- 16 *Note* Consultation includes consultation occurring before the commencement
17 of s 423 (see s 423 (4)).
- 18 (2) The report must include the views expressed by the national capital
19 authority.

20 **426 Variations begun but not notified under repealed Act**

- 21 (1) This section applies if, before commencement day—
- 22 (a) the planning and land authority prepares a plan variation under
23 the repealed Act, section 15 (Preparation of plan variations);
24 and
- 25 (b) in preparing the draft plan variation, the authority complies
26 with the following provisions of the repealed Act:
- 27 (i) section 16 (Consultation with conservator); and

- 1 (ii) section 17 (Consultation with heritage council); and
2 (iii) section 18 (Environmental reports and inquiries); and
3 (c) the authority complies with the repealed Act, section 20
4 (Consultation with national capital authority) in relation to the
5 draft plan variation; and
6 (d) the authority tells the Minister in writing about the draft plan
7 variation; and
8 (e) the authority consults with, and considers any advice given by,
9 the environment protection authority; and
10 (f) the draft plan variation has not been publicly notified under the
11 repealed Act.
- 12 (2) Each of the following applies in relation to the draft plan variation:
- 13 (a) the draft plan variation is taken to be a draft plan variation
14 under this Act;
- 15 (b) the planning and land authority is taken to have complied with
16 this Act, section 60 (Consultation etc about draft plan
17 variations being prepared) in relation to the draft plan
18 variation.

19 **427 Draft plan variations publicly notified under repealed Act**

- 20 (1) This section applies if, before commencement day—
- 21 (a) the planning and land authority prepares a plan variation under
22 the repealed Act, section 15 (Preparation of plan variations);
23 and
24 (b) in preparing the draft plan variation, the authority complies
25 with the following provisions of the repealed Act:
- 26 (i) section 16 (Consultation with conservator); and

Section 427

- 1 (ii) section 17 (Consultation with heritage council); and
2 (iii) section 18 (Environmental reports and inquiries); and
3 (c) the authority complies with the repealed Act, section 20
4 (Consultation with national capital authority) in relation to the
5 draft plan variation; and
6 (d) the authority tells the Minister in writing about the draft plan
7 variation; and
8 (e) the authority consults with, and considers any advice given by,
9 the environment protection authority; and
10 (f) the authority prepares a notice (the *consultation notice*) under
11 the repealed Act, section 19 (Public consultation—notification)
12 in relation to the draft plan variation; and
13 (g) the consultation notice complies with the repealed Act,
14 section 19A (Public consultation—notice of interim effect etc);
15 and
16 (h) the authority complies with the repealed Act, section 19B
17 (Public consultation—availability of draft plan variation etc)
18 and section 21 (Public inspection of comments) in relation to
19 the draft plan variation; and
20 (i) the draft plan variation is not—
21 (i) withdrawn under the repealed Act, section 22 (Revision,
22 deferral or withdrawal of draft plan variations); or
23 (ii) submitted to the Minister under the repealed Act,
24 section 24 (Submission of draft plan variation to
25 Minister).
26 (2) Each of the following applies in relation to the draft plan variation:
27 (a) the draft plan variation is taken to be a draft plan variation
28 under this Act;

- 1 (b) the planning and land authority is taken to have complied with
2 this Act, section 60 (Consultation etc about draft plan
3 variations being prepared) in relation to the draft plan
4 variation;
- 5 (c) the draft plan variation is taken to have been publicly notified
6 under this Act, section 62 (Public consultation—notification);
- 7 (d) the consultation notice is taken to be a consultation notice
8 under section 62 that complies with the requirements of this
9 Act, section 63 (Public consultation—notice of interim effect
10 etc);
- 11 (e) if the consultation notice states that the draft plan variation has
12 interim effect, the draft plan variation has interim effect in
13 accordance with the consultation notice and this Act,
14 section 64 (Effect of draft plan variations publicly notified).

15 **428 Draft plan variation revised etc under repealed Act**

- 16 (1) This section applies if, before commencement day—
- 17 (a) the planning and land authority prepares a plan variation under
18 the repealed Act, section 15 (Preparation of plan variations);
19 and
- 20 (b) in preparing the draft plan variation, the authority complies
21 with the following provisions of the repealed Act:
- 22 (i) section 16 (Consultation with conservator); and
23 (ii) section 17 (Consultation with heritage council); and
24 (iii) section 18 (Environmental reports and inquiries); and
- 25 (c) the authority complies with the repealed Act, section 20
26 (Consultation with national capital authority) in relation to the
27 draft plan variation; and

- 1 (d) the authority tells the Minister in writing about the draft plan
2 variation; and
- 3 (e) the authority consults with, and considers any advice given by,
4 the environment protection authority; and
- 5 (f) the authority prepares a notice (the *consultation notice*) under
6 the repealed Act, section 19 (Public consultation—notification)
7 in relation to the draft plan variation; and
- 8 (g) the consultation notice complies with the repealed Act, section
9 19A (Public consultation—notice of interim effect etc); and
- 10 (h) the authority complies with the repealed Act, section 19B
11 (Public consultation—availability of draft plan variation etc)
12 and section 21 (Public inspection of comments) in relation to
13 the draft plan variation; and
- 14 (i) the draft plan variation is revised under the repealed Act,
15 section 22 (Revision, deferral or withdrawal of draft plan
16 variations); and
- 17 (j) the draft plan variation is not submitted to the Minister under
18 the repealed Act, section 24 (Submission of draft plan variation
19 to Minister).
- 20 (2) Each of the following applies in relation to the draft plan variation:
- 21 (a) the draft plan variation is taken to be a draft plan variation
22 under this Act;
- 23 (b) the planning and land authority is taken to have complied with
24 this Act, section 60 (Consultation etc about draft plan
25 variations being prepared) in relation to the draft plan
26 variation;
- 27 (c) the draft plan variation is taken to have been publicly notified
28 under this Act, section 62 (Public consultation—notification);

- 1 (d) the consultation notice is taken to be a consultation notice
2 under section 62 that complies with the requirements of this
3 Act, section 63 (Public consultation—notice of interim effect
4 etc);
- 5 (e) the draft plan variation is taken to have been revised under this
6 Act, section 67 (Revision and withdrawal of draft plan
7 variations).

1 **Part 15.3** **Development and development**
2 **applications**

3 **429** **Transitional—meaning of *development*—Act**

4 To remove any doubt, the definition of *development* in section 7
5 applies in relation to a lease, whether granted before or after the
6 commencement of this Act.

7 **430** **Transitional—applications lodged before commencement**
8 **day**

9 (1) This section applies if—

10 (a) before commencement day, a person applied for approval
11 under the repealed Act, section 226 (Application to undertake
12 development); and

13 (b) immediately before commencement day, the planning and land
14 authority had not decided the application.

15 (2) The repealed Act continues to apply in relation to the application
16 despite its repeal.

17 (3) If the application is approved, the approval is taken to be a
18 development approval under this Act.

19 **431** **Transitional—application to apply in relation to use for**
20 **otherwise prohibited development**

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

- 1 (a) the use was authorised immediately before commencement day
2 by—
- 3 (i) the repealed Act, section 175 (Use of land for leased
4 purpose); or
- 5 (ii) a lease granted or varied under the repealed Act; but
- 6 (b) on or after commencement day, the use, including beginning or
7 changing to the use, is a prohibited development.
- 8 *Note* A reference to an Act includes a reference to the statutory instruments
9 made or in force under the Act, including any regulation (see
10 Legislation Act, s 104).
- 11 (2) Despite section 133 (Development proposals for prohibited
12 development)—
- 13 (a) a person may apply to the planning and land authority under
14 chapter 7 (Development approvals) for development approval
15 for the proposal; and
- 16 (b) the proposal is taken not to be prohibited development; and
- 17 (c) the impact track applies to the proposal.
- 18 (3) The right to make an application under subsection (2) in relation to
19 the use of land, or a building or structure on the land, is not affected
20 only because 1 or more of the following apply in relation to the use:
- 21 (a) the use is not continuous;
- 22 (b) if the use was authorised under a lease (the *affected lease*)—
- 23 (i) someone deals with the affected lease;
- 24 (ii) a further lease is granted for the affected lease on
25 application under section 246, whether the grant happens
26 immediately after the expiry of the affected lease or
27 otherwise.

1 (4) However, if the use was authorised under a lease, the right to make
2 an application under subsection (2) in relation to the use of land, or
3 a building or structure on the land, ends if—

4 (a) the lease expires and no application is made under section 246
5 for a further lease; or

6 *Note* A person may apply for the grant of a further lease not later than
7 6 months after the expiry of the affected lease.

8 (b) the lease is surrendered (other than under section 246) or
9 terminated.

10 (5) In this section:

11 *deal* with a lease—see section 226.

12 **432 Transitional—approvals in force before commencement**

13 (1) This section applies if, immediately before commencement day, a
14 person had an approval under the repealed Act, part 6 (Approvals
15 and orders).

16 (2) The approval—

17 (a) continues in force until the time when, under the repealed Act,
18 it would have ended; and

19 (b) may be extended once under the repealed Act as if the repealed
20 Act were still in force if the application for the extension is
21 made—

22 (i) before the approval expires; and

23 (ii) not later than 6 months after commencement day.

- 1 **433** **Transitional—approvals in force with uncommenced**
2 **extension**
- 3 (1) This section applies if, immediately before commencement day—
- 4 (a) a person had an approval under the repealed Act, part 6
5 (Approvals and orders); and
- 6 (b) an extension of the approval had been granted but had not
7 commenced.
- 8 (2) The approval—
- 9 (a) continues in force under the repealed Act, as if the repealed
10 Act had not been repealed; and
- 11 (b) ends at the end of the period for which the approval was
12 extended under the repealed Act before commencement day.
- 13 **434** **Extended meaning of *development approval*—s 193**
- 14 In section 193:
- 15 *development approval* includes an approval under the repealed Act,
16 part 6 (Approvals and orders) that is continued in force under this
17 chapter.

1 **Part 15.4** **Transitional—existing rights to**
2 **use land, buildings and**
3 **structures**

4 **435 Existing rights to use land etc not affected**

- 5 (1) This section applies if, immediately before commencement day—
- 6 (a) a person had a right to use land, or a building or structure on
7 the land, in a way; and
- 8 (b) the person's right to use the land, building or structure was
9 authorised by—
- 10 (i) the repealed Act, section 175 (Use of land for leased
11 purpose); or
- 12 (ii) a lease granted or varied under the repealed Act; or
- 13 (iii) a licence granted under the repealed Act; or
- 14 (iv) a permit granted under the *Roads and Public*
15 *Places Act 1937*.

16 *Note* A reference to an Act includes a reference to the statutory instruments
17 made or in force under the Act, including a regulation or the territory
18 plan (see Legislation Act, s 104).

- 19 (2) This section also applies if—
- 20 (a) before commencement day—
- 21 (i) a person had a right to use land, or a building or structure
22 on the land; and
- 23 (ii) the right to use the land, building or structure was
24 authorised by a lease (the *old lease*); and
- 25 (iii) the old lease expired; and

- 1 (b) the person applies for the grant of a further lease from the old
2 lease under section 246; and
- 3 (c) section 246 applies to the person's application because of
4 section 442.
- 5 (3) The use of the land, building or structure in the way authorised is
6 lawful, despite any other provision of this Act.
- 7 (4) However, this section is subject to section 436 and section 436.

8 **436 Effect of s 435 etc**

- 9 (1) To remove any doubt, if a use of land, or a building or structure on
10 the land, is lawful because of section 435—
- 11 (a) a person need not apply for development approval—
- 12 (i) to continue, or begin, to use the land, building or structure
13 in the way authorised; or
- 14 (ii) to change the use of the land, building or structure to the
15 use authorised; and
- 16 (b) the right to use the land, building or structure in the way
17 authorised does not end only because 1 or more of the
18 following apply in relation to the use:
- 19 (i) the use is not continuous;
- 20 (ii) someone deals with the lease (the *affected lease*) that
21 authorises the use;
- 22 (iii) a further lease is granted for the affected lease on
23 application under section 246, whether the grant happens
24 immediately after the expiry of the affected lease or
25 otherwise.

- 1 (2) However, the right to use the land, building or structure in the way
2 authorised stops being lawful if—
- 3 (a) if the use of the land, building or structure was authorised by a
4 lease (the *affected lease*)—
- 5 (i) the affected lease expires and no application is made
6 under section 246 for a further lease; or
- 7 *Note* A person may apply for the grant of a further lease not later
8 than 6 months after the expiry of the affected lease.
- 9 (ii) the affected lease is surrendered (other than under
10 section 246) or terminated; or
- 11 (b) if the use is authorised by a licence under the repealed Act or a
12 permit under the *Roads and Public Places Act 1937*—the
13 licence or permit ends—
- 14 (i) whether on expiry or otherwise; and
15 (ii) even if renewed.
- 16 (3) In this section:
- 17 *authorised*, in relation to use, means authorised in a way mentioned
18 in section 435 (1) (b).
- 19 *deal* with a lease—see section 226.
- 20 **437 Transitional—existing rights to use land if use involves**
21 **construction etc**
- 22 (1) The use of land, or a building or structure on the land, in the way
23 authorised is not lawful under section 435 if—
- 24 (a) after commencement day—
- 25 (i) a building, or structure on the land, is constructed, altered
26 or demolished; or

- 1 (ii) earthworks or other construction work is carried out on
2 the land; and
3 (b) the construction, alteration, demolition or work—
4 (i) is associated with the use; and
5 (ii) is not exempt from requiring development approval.

6 (2) In this section:

7 *authorised*, in relation to use, means authorised in a way mentioned
8 in section 435 (1) (b).

9 **438 Transitional—use of lease**

10 (1) This section applies to a lease if, immediately before
11 commencement day—

12 (a) the lease was in force; and

13 (b) a use (the *prescribed use*) was—

14 (i) prescribed under the repealed Act, section 175 (3) (a) and
15 authorised by a development approval under the repealed
16 Act; or

17 (ii) prescribed under the repealed Act, section 175 (3) (b).

18 (2) The land comprised in the lease, or a building or structure on the
19 land, may be used for the prescribed use.

20 (3) The right to use the land comprised in the lease, or a building or
21 structure on the land, under subsection (2) is not affected only
22 because 1 or more of the following apply in relation to the use:

23 (a) the use is not continuous;

24 (b) someone deals with the lease;

- 1 (c) a further lease is granted for the lease on application under
2 section 246, whether the grant happens immediately after the
3 expiry of the affected lease or otherwise.
- 4 (4) However, the right to use the land comprised in the lease, or a
5 building or structure on the land, under subsection (2) ends if—
- 6 (a) the lease expires and no application is made under section 246
7 for a further lease; or
- 8 *Note* A person may apply for the grant of a further lease not later than
9 6 months after the expiry of the affected lease.
- 10 (b) the lease is surrendered (other than under section 246) or
11 terminated.
- 12 (5) The right to use the land, building or structure under subsection (2)
13 is taken to be authorised by section 240.
- 14 (6) In this section:
15 *deal* with a lease—see section 226.

1 **Part 15.5** **Transitional—leases and**
2 **licences**

3 **439** **Transitional—community leases**

4 (1) To remove any doubt, after commencement day, a person may deal
5 with a lease granted under the repealed Act, section 163 (Leases to
6 community organisations) with the consent of the planning and land
7 authority under this Act, section 257 (Restrictions on dealings with
8 concessional leases).

9 (2) In this section:

10 *deal* with a lease—see section 226.

11 **440** **Transitional—special leases—s 244**

12 (1) Section 244 also applies to a lease (a *special lease*) granted under
13 the repealed Act, section 164 (Special leases).

14 (2) The planning and land authority must not consent under
15 section 244 (4) to a person dealing with a special lease unless
16 satisfied that the person to whom it is proposed that the lease should
17 be assigned or transferred or the person to whom it is proposed that
18 possession of the land should be given—

19 (a) is a person who, if the lease were being granted, could have
20 been granted the lease in accordance with the repealed Act,
21 section 164 as in force immediately before commencement
22 day; and

23 (b) can satisfactorily continue to operate the lease for a purpose
24 authorised by the lease.

25 (3) For a special lease, the *restricted period* under section 244 (4) is
26 5 years after the date the lease is granted.

- 1 (4) In this section:
2 *deal* with a lease—see section 244 (4).
- 3 **441 Transitional—Leases Act 1918 leases—s 244**
- 4 (1) Section 244 also applies to a lease (an *old lease*) granted under the
5 *Leases Act 1918*, as in force at any time.
- 6 (2) The planning and land authority must not consent under
7 section 244 (4) to a person dealing with an old lease unless satisfied
8 that the person to whom it is proposed that the lease should be
9 assigned or transferred or the person to whom it is proposed that
10 possession of the land should be given—
- 11 (a) either—
- 12 (i) is a person who, if the lease were being granted, could
13 have been granted the lease in accordance with the *Leases*
14 *Act 1918* (repealed); or
- 15 (ii) could be granted a lease under section 231 (1) (d) for the
16 same purpose as, or a purpose similar to, the purpose
17 under the old lease; and
- 18 *Note* A lease must not be granted under s 231 (1) (d) if the criteria
19 under s 233 are not satisfied.
- 20 (b) can satisfactorily continue to operate the lease for a purpose
21 authorised by the lease.
- 22 (3) For an old lease, the *restricted period* under section 244 (4) is the
23 term of the lease.
- 24 (4) In this section:
25 *deal* with a lease—see section 244 (4).

- 1 **442** **Transitional—extended application of s 246**
- 2 Section 246 also applies to a person (the *lessee*) who held a lease
- 3 (the *old lease*) under the repealed Act if—
- 4 (a) the old lease expired before commencement day; and
- 5 (b) the lessee applies to the planning and land authority for the
- 6 grant of a further lease of the land; and
- 7 (c) the old lease expired not more than 6 months before the
- 8 application for the grant of a further lease; and
- 9 (d) if the old lease is not a residential lease—all rent due under the
- 10 old lease is paid; and
- 11 (e) the criteria (if any) prescribed by regulation for section 246 are
- 12 satisfied.
- 13 **443** **Transitional—extended application of s 268**
- 14 (1) Section 268 also applies to a lease granted under the repealed Act,
- 15 section 164 (Special leases).
- 16 (2) This section is a law to which the Legislation Act, section 88
- 17 (Repeal does not end effect of transitional laws etc) applies.
- 18 **444** **Transitional—extended application of s 277**
- 19 Section 277 also applies to—
- 20 (a) a rural lease granted under the repealed Act, section 161
- 21 (Granting of leases) after 15 December 1999 for consideration
- 22 less than the market value of the lease; and
- 23 (b) a lease granted under the repealed Act, section 171A (Grant of
- 24 further rural leases) after 15 December 1999 on the payment of
- 25 an amount worked out on the application of an amount
- 26 condition mentioned in the repealed Act, section 171A (3) (a).

- 1 **445** **Transitional—effect of s 242**
- 2 To remove any doubt, section 242 (No right to use, flow and control
- 3 of water) does not apply in relation to leases or further leases
- 4 granted before 11 December 1998.
- 5 **446** **Transitional—status of leases and licences**
- 6 (1) This section applies to a lease or licence—
- 7 (a) granted or continued, or purported to have been granted or
- 8 continued under the repealed Act; and
- 9 (b) in force immediately before commencement day.
- 10 (2) Subject to section 447, the lease or licence is taken, on and after
- 11 commencement day, to have been granted under this Act.
- 12 **447** **Transitional—continued application of certain repealed**
- 13 **Acts and provisions**
- 14 (1) The *Australian National University (Leases) Act 1967* (repealed)
- 15 continues to apply in relation to a lease—
- 16 (a) granted under, or continued in force by, that Act; and
- 17 (b) in force immediately before commencement day.
- 18 (2) The *Canberra College of Advanced Education (Leases) Act 1977*
- 19 (repealed) continues to apply in relation to a lease—
- 20 (a) granted under that Act; and
- 21 (b) in force immediately before commencement day.
- 22 (3) However, for subsection (2), the *Canberra College of Advanced*
- 23 *Education (Leases) Act 1977* (repealed), section 5 is taken to apply
- 24 as if that section had been amended by omitting ‘in perpetuity’.

- 1 (4) The *Church Lands Leases Act 1924* (repealed), sections 5, 6, 8 and
2 10 continue to apply in relation to a lease—
- 3 (a) granted under that Act; and
- 4 (b) in force immediately before commencement day.
- 5 (5) In a continuing lease, a reference to *improvements* is a reference to
6 improvements other than improvements by way of clearing,
7 draining, grading, filling, excavating or levelling made by the
8 Territory or the Commonwealth or the cost of which the Territory or
9 the Commonwealth has paid.
- 10 (6) The following sections of the *City Area Leases Act 1936* (repealed),
11 continue to apply:
- 12 (a) so far as the section relates to a continuing lease in which
13 provision is made for the land comprised in the lease to be used
14 for a purpose mentioned in that Act, section 8A (1)—
15 section 8A;
- 16 (b) so far as the section relates to a variation of a continuing lease
17 in relation to which notice under that Act, section 18A of that
18 Act was given before commencement day—section 18B;
- 19 (c) so far as section 22 relates to a continuing lease in relation to
20 which notice under the section was given before
21 commencement day—section 22;
- 22 (d) so far as the section relates to a continuing lease mentioned in
23 that Act, section 28A (1)—section 28A;
- 24 (e) so far as the section relates to a continuing lease mentioned in
25 that Act, section 28DA (1)—section 28DA;
- 26 (f) so far as the section relates to a sublease mentioned in that Act,
27 section 30A (2) and in force immediately before 2 April
28 1992—section 30A.

Section 448

- 1 (7) Despite the repeal of the *Leases (Special Purposes) Act 1925*, that
2 Act, sections 5AC, 5AD, 5A and 5B continue to apply in relation to
3 a lease—
- 4 (a) granted under that Act, section 3 (2) as in force immediately
5 before 11 May 1989; and
- 6 (b) in force immediately before commencement day.
- 7 (8) The *Leases (Special Purposes) Act 1925* (repealed), section 5BA (6)
8 continues to apply in relation to a lease—
- 9 (a) granted under that Act; and
- 10 (b) in force immediately before commencement day.
- 11 (9) In this section:
- 12 *continuing lease* means a lease granted or continued, or purported
13 to have been granted or continued, under the *City Area Leases*
14 *Act 1936* and to which this Act, section 446 applies.
- 15 (10) Subsections (1) to (9) are laws to which the Legislation Act,
16 section 88 (Repeal does not end effect of transitional laws etc)
17 applies.
- 18 (11) This section expires on commencement day.

19 **448 Transitional—applications for certain grants decided**
20 **promptly**

- 21 (1) This section applies if—
- 22 (a) a person applies for the grant of a lease under the repealed Act,
23 section 161 (Granting of leases), section 163 (Leases to
24 community organisations) or section 164 (Special leases); and
- 25 (b) immediately before commencement day, the planning and land
26 authority has not decided the application; and
- 27 (c) not more than 6 months have passed since commencement day.

1 (2) The application may be decided under the repealed Act as if the
2 repealed Act had not been repealed.

3 (3) However, if a lease is granted on the application, for this chapter,
4 the lease is taken to have been granted immediately before
5 commencement day.

6 **449 Transitional—applications for certain grants decided after**
7 **6 months**

- 8 (1) This section applies if—
- 9 (a) a person applies for the grant of a lease under the repealed Act,
10 section 161 (Granting of leases), section 163 (Leases to
11 community organisations) or section 164 (Special leases); and
 - 12 (b) immediately before commencement day, the planning and land
13 authority has not decided the application; and
 - 14 (c) more than 6 months have passed since commencement day.

15 (2) The application is taken to have been made under this Act.

16 (3) If the application complied with the repealed Act when made, the
17 application is taken to have been made in accordance with this Act.

18 **450 Transitional—applications for licences decided promptly**

- 19 (1) This section applies if—
- 20 (a) a person applies for a licence under the repealed Act; and
 - 21 (b) immediately before commencement day, the planning and land
22 authority has not decided the application; and
 - 23 (c) not more than 6 months have passed since commencement day.
- 24 (2) The application may be decided under the repealed Act as if the
25 repealed Act had not been repealed.

1 (3) However, if a licence is granted on the application, for this chapter,
2 the licence is taken to have been granted immediately before
3 commencement day.

4 **451 Transitional—applications for licence decided after 6**
5 **months**

- 6 (1) This section applies if—
- 7 (a) a person applies for a licence under the repealed Act; and
- 8 (b) immediately before commencement day, the planning and land
9 authority has not decided the application; and
- 10 (c) more than 6 months have passed since commencement day.
- 11 (2) The application is taken to have been made under this Act.
- 12 (3) If the application complied with the repealed Act when made, the
13 application is taken to have been made in accordance with this Act.

1 **Part 15.6** **Transitional—controlled**
2 **activities**

3 **452** **Transitional—meaning of *construction occupations***
4 ***licensee* in s 338 (4)**

5 In section 338 (4):

6 *construction occupations licensee*, in relation to conduct, includes a
7 person who was a registered construction practitioner under the
8 *Construction Practitioners Registration Act 1998* when the conduct
9 happened.

10 **453** **Transitional—certain controlled activities**

11 A reference in schedule 2, item 4 to having a building or structure
12 that was constructed without approval required by this Act,
13 chapter 7 (Development approvals) includes a reference to having a
14 building or structure that was constructed without approval required
15 by—

- 16 (a) the *Land (Planning and Environment) Act 1991*, division 6.2
17 (Approvals) as in force at any time; or
18 (b) the *Buildings (Design and Siting) Act 1964* as in force at any
19 time.

1 **Schedule 1** **Reviewable decisions, eligible entities and interested**
 2 **people**

3
 4 (see s 400)

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
1	decision under s 138 (4) to refuse to extend the period within which further information must be provided	planning and land authority	applicant for extension of time	person who made representation under s 153 in relation to the application
2	decision under s 158 to approve a development application in the code track subject to conditions	planning and land authority	applicant	person who made representation under s 153 in relation to the application

Schedule 1 Reviewable decisions, eligible entities and interested people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
3	<p>decision under s 158 to approve a development application in the merit track subject to a condition or to refuse to approve the application, to the extent that the decision—</p> <p>(a) is subject to a code requirement and does not comply with the requirement; or</p> <p>(b) is not subject to a code requirement</p>	planning and land authority	applicant	person who made representation under s 153 in relation to the application
4	<p>decision under s 158 to approve a development application in the merit track, whether subject to a condition or otherwise—</p> <p>(a) if—</p> <p>(i) the application was required</p>	planning and land authority	<p>an entity if—</p> <p>(a) the entity made a representation under s 153 about the proposal or had a reasonable excuse for</p>	the approval-holder

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
	<p>to be notified under s 150 and s 152, whether or not it was also required to be notified under s 151; and</p> <p>(ii) the application is not exempted by regulation; and</p> <p>(b) to the extent that the decision—</p> <p>(i) is subject to a code requirement and does not comply with the requirement; or</p> <p>(ii) is not subject to a code requirement</p>		<p>not making a representation; and</p> <p>(b) the approval of the development application may cause the entity to suffer material detriment</p>	

Schedule 1 Reviewable decisions, eligible entities and interested people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
5	decision under s 158 to approve a development application in the impact track subject to a condition, or to refuse to approve the application	planning and land authority	applicant	person who made a representation under s 153 in relation to the application

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
6	decision under s 158 to approve a development application in the impact track, whether subject to a condition or otherwise, unless the application is exempted by regulation	planning and land authority	an entity if— (a) the entity made a representation under s 153 about the proposal or had a reasonable excuse for not making a representation; and (b) the approval of the development application may cause the entity to suffer material detriment	the approval-holder

Schedule 1 Reviewable decisions, eligible entities and interested people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
7	decision of entity required, under condition on development approval, to be satisfied in relation to carrying out of development or stage of development (see s 160 (3) (a))	entity whose satisfaction required by condition on development approval	approval holder	planning and land authority
8	decision under s 160 (5) to refuse to approve an amendment of a plan, drawing or other document approved in accordance with a condition of a development approval	planning and land authority	approval holder	person who made representation under s 153 in relation to the application for development approval
9	decision under s 179 (3) to refuse to extend the prescribed period for finishing development or stage of development	planning and land authority	approval holder	person who made representation under s 153 in relation to the application for the development approval

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
10	decision under s 183 to revoke development approval	planning and land authority	approval holder of approval revoked	person who made representation under s 153 in relation to the application for the development approval
11	decision under s 187 (1) (b) (i) on reconsideration to approve application subject to condition	planning and land authority	applicant for reconsideration	person who made representation under s 153 in relation to the application the approval of which was reconsidered
12	decision under s 187 (1) (b) (i) on reconsideration	planning and land authority	person who made representation under s 153 in relation to the application the decision on which was reconsidered	applicant for reconsideration

Schedule 1 Reviewable decisions, eligible entities and interested people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
13	decision under s 187 (1) (b) (ii) to confirm original decision on reconsideration	planning and land authority	applicant for reconsideration	person who made representation under s 153 in relation to the application the approval of which was reconsidered
14	decision under s 192 to refuse to amend development approval	planning and land authority	approval holder	person who made representation under s 153 in relation to the application for development approval
15	decision under s 231 to refuse to grant a lease to a person by direct grant	planning and land authority	applicant for grant of lease	
16	decision under s 243 (2) to end person's right to be granted a lease	planning and land authority	person whose right is ended	

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
17	decision under s 245 to refuse to consent to a dealing with a lease	planning and land authority	lessee	
18	decision under s 246 to refuse to grant a further lease	planning and land authority	applicant for grant of further lease	
19	decision under s 249 or s (4) that a lease is, or is not, a concessional lease	planning and land authority	lessee	
20	decision under s 255 about the payout amount for a concessional lease	planning and land authority	lessee	
21	decision under s 258 to refuse to consent to a dealing with a lease	planning and land authority	lessee	
22	decision under s 260 to confirm variation of rent after review	planning and land authority	lessee	

Schedule 1 Reviewable decisions, eligible entities and interested people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
23	decision under s 260 to set aside variation and substitute another variation of rent after review	planning and land authority	lessee	
24	decision under s 264 adjusting rent after reappraisal	planning and land authority	lessee	
25	decision under s 266 (1) (d) about amount payable for variation to reduce rent payable under lease to nominal rent	planning and land authority	lessee	
26	decision under s 270 about the amount of change of use charge for variation of lease	planning and land authority	lessee	
27	decision under s 271 about amount of remission of change of use charge for variation of lease	planning and land authority	lessee	

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
28	decision under s 272 about the amount of an increase of change of use charge for variation of lease	planning and land authority	lessee	
29	decision under s 288 (2) about market value of improvements on land	planning and land authority	lessee	
30	decision under s 289 (1) to refuse to issue a certificate of compliance	planning and land authority	lessee	
31	decision under s 289 (2) to issue certificate of compliance stating that building and development provision has been partly complied with	planning and land authority	lessee	
32	decision under s 289 (2) to issue a certificate of compliance subject to condition that lessee provide security	planning and land authority	lessee	

Schedule 1 Reviewable decisions, eligible entities and interested people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
33	decision under s 289 (2) to refuse to issue a certificate of compliance	planning and land authority	lessee	
34	decision under s 292 to refuse to consent to the assignment or transfer of a lease or interest in a lease	planning and land authority	lessee	
35	decision under s 293 to refuse to authorise payment of prescribed amount for surrendered or terminated lease	planning and land authority	person surrendering lease or whose lease is terminated	
36	decision under s 294 (2) to refuse to accept the surrender of a lease, or part of land comprised in lease	planning and land authority	person surrendering lease or part of land comprised in lease	
37	decision under s 294 (2) to accept the surrender of a lease, or part of land comprised in lease, subject to a condition	planning and land authority	person surrendering lease or part of land comprised in lease	

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
38	decision under s 344 to make a controlled activity order other than the order applied for	planning and land authority	applicant for controlled activity order	
39	decision under s 344 to refuse to make a controlled activity order	planning and land authority	applicant for controlled activity order	
40	decision under s 344 to make a controlled activity order	planning and land authority	person against whom order directed lessee of land to which order relates occupier of land to which order relates	

Schedule 1 Reviewable decisions, eligible entities and interested people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
41	decision under s 348 to make a controlled activity order	planning and land authority	person against whom order directed lessee of land to which order relates occupier of land to which order relates	
42	decision under s 356 (4) to refuse to revoke a controlled activity order	planning and land authority	applicant for revocation lessee of land to which order relates occupier of land to which order relates	

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
43	decision under s 370 (3) to give a prohibition notice	planning and land authority	person against whom notice directed lessee of land to which notice relates occupier of land to which notice relates	
44	decision under s 373 (3) to refuse to revoke a prohibition notice	planning and land authority	applicant for revocation lessee of land to which notice relates occupier of land to which notice relates	
45	decision under s 375 to terminate a lease	planning and land authority	person whose lease is terminated	

Schedule 1 Reviewable decisions, eligible entities and interested people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities	column 5 interested people
46	decision under s 376 to terminate a licence	planning and land authority	person whose licence is terminated	
47	decision under s 409 to refuse to grant a right to extract minerals	planning and land authority	person applying for grant of right	

1 **Schedule 2 Controlled activities**

2 (see s 332)

column 1 item	column 2 controlled activities	column 3 penalty
1	failing to comply with— (a) a lease; or (b) if a lease is granted subject to the lessee entering into a development agreement and the lessee has entered into such an agreement—the development agreement	60 penalty units
2	failing to keep a leasehold clean	60 penalty units
3	undertaking a development for which development approval is required other than in accordance with a development approval	60 penalty units
4	having a building or structure that was constructed without approval required by this Act, chapter 7 (Development approvals)	60 penalty units
5	using unleased territory land in a way that is not authorised by a licence under this Act or permit under the <i>Roads and Public Places Act 1937</i>	60 penalty units
6	managing land held under a rural lease other than in accordance with the land management agreement that applies to it	60 penalty units
7	failing to enter into a land management agreement as required under section 279	60 penalty units

1 **Schedule 3 Management objectives for**
 2 **public land**

3 (see s 309)

column 1 item	column 2 reserve	column 3 management objectives
1	wilderness area	1 to conserve the natural environment in a manner ensuring that disturbance to that environment is minimal 2 to provide for the use of the area (other than by vehicles or other mechanised equipment) for recreation by limited numbers of people, so as to ensure that opportunities for solitude are provided
2	national park	1 to conserve the natural environment 2 to provide for public use of the area for recreation, education and research
3	nature reserve	1 to conserve the natural environment 2 to provide for public use of the area for recreation, education and research
4	special purpose reserve	1 to provide for public and community use of the area for recreation and education
5	urban open space	1 to provide for public and community use of the area 2 to develop the area for public and community use

column 1 item	column 2 reserve	column 3 management objectives
6	cemetery or burial ground	1 to provide for the interment or cremation of human remains and the interment of the ashes of human remains
7	protection of water supply	1 to protect existing and future domestic water supply 2 to conserve the natural environment 3 to provide for public use of the area for education, research and low-impact recreation
8	lake	1 to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs 2 to prevent and control pollution of waterways 3 to provide for public use of the lake for recreation 4 to provide a habitat for fauna and flora
9	sport and recreation reserve	1 to provide for public and community use of the area for sport and recreation

Note **Natural environment**—see s 311.

1 **Schedule 4 Development proposals in**
2 **impact track because of need**
3 **for EIS**
4 (see s 122 (b))

5 **Part 4.1 Interpretation—sch 4**

6 **4.1 Definitions—sch 4**

7 In this schedule:

8 ***biodiversity corridor*** means a river corridor or wildlife corridor
9 identified in the territory plan or in a nature conservation strategy, or
10 action plan, under the *Nature Conservation Act 1980*.

11 ***clearing***, of native vegetation—see the *Nature Conservation*
12 *Act 1980*, section 74.

13 ***correctional centre***—see the *Corrections Management Act 2006*,
14 dictionary.

15 ***Corrections Management Act 2006***—see the *Crimes (Sentence*
16 *Administration) Act 2005*, section 603.

17 ***domestic water supply catchment*** means a domestic water supply
18 catchment identified in the territory plan.

19 ***ecological community***—see the *Nature Conservation Act 1980*,
20 dictionary.

21 ***endangered***—see the *Nature Conservation Act 1980*, dictionary.

22 ***flora and fauna committee*** means the Flora and Fauna Committee
23 established under the *Nature Conservation Act 1980*, section 13.

24 ***major road*** means a road with physically separated carriageways,
25 which has at least 4 lanes (in either direction) and is at least 1km
26 long.

- 1 ***municipal waste***—
- 2 (a) means—
- 3 (i) domestic waste left for kerbside collection or taken
- 4 directly to a waste station or transfer station; and
- 5 (ii) waste produced from maintaining the environment, for
- 6 example, from street cleaning, emptying public rubbish
- 7 bins and cleaning parks; but
- 8 *Note* An example is part of the Act, is not exhaustive and may
- 9 extend, but does not limit, the meaning of the provision in
- 10 which it appears (see Legislation Act, s 126 and s 132).
- 11 (b) does not include sewage.
- 12 ***native vegetation***—see the *Nature Conservation Act 1980*,
- 13 section 73.
- 14 ***protected***—a species is ***protected*** if the species is a protected fish,
- 15 protected invertebrate, protected native animal or protected native
- 16 plant under the *Nature Conservation Act 1980*.
- 17 ***regulated waste***—see the *Environment Protection Act 1997*,
- 18 schedule 1, section 1.1A.
- 19 ***special protection status***, in relation to a species—see the *Nature*
- 20 *Conservation Act 1980*, dictionary.
- 21 ***threatening process*** means a process declared to be a threatening
- 22 process under the *Nature Conservation Act 1980*, section 38 (4).
- 23 ***vulnerable***, in relation to a species—see the *Nature Conservation*
- 24 *Act 1980*, dictionary.
- 25 ***water sensitive urban design*** means a design in accordance with a
- 26 water sensitive urban code in the territory plan.

1 **Part 4.2** **Development proposals requiring**
2 **EIS—activities**

column 1 item	column 2 development proposal
1	<p>proposal for a linear transport system corridor (for example, construction of new corridor or realignment outside existing corridor) intended to result in a major road, bus way, railway, light rail or tramway, and that is likely to have a significant impact on air quality or ambient noise or cause a significant level of vibration, significant visual intrusion or significant impact on a residential area</p> <p><i>Note</i> 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).</p>
2	<p>proposal for electricity generation works or distribution corridor, including a proposal including all or any of the following:</p> <ul style="list-style-type: none"> (a) transmission line corridor construction, or realignment works, outside an existing corridor that are intended to carry transmission lines with a voltage of 132kV or more; (b) a hydroelectric facility that requires a new dam, weir or inter-valley transfer of water and that will generate 1 megawatt or more of electrical power; (c) a wind farm that will consist of 5 or more turbines or will generate 5 megawatts or more of electrical power; (d) an electricity generating station that will supply 30 megawatts or more of electrical power; (e) an electricity generating station if the temperature of water released from the station into a body of water (other than an artificial body of water) is likely to vary by more than 2°C from the ambient temperature of the receiving water
3	<p>proposal for construction of a dam that will—</p> <ul style="list-style-type: none"> (a) be at least 10m high, with a storage capacity of at least 20 000m³; or (b) be at least 5m high, with a storage capacity of at least 50 000m³

column 1 item	column 2 development proposal
4	proposal for construction of an airport or facility for the landing, taking off or parking of planes or helicopters, including a terminal or building for the parking, servicing, maintenance of aircraft, or another area for the maintenance of installations at the airport or facility or movement of aircraft or equipment used at the airport or facility
5	proposal for construction of a sewage treatment plant (other than a septic tank that services residential premises), or sewer reticulation system, designed to service a residential subdivision that— <ul style="list-style-type: none"> <li data-bbox="491 835 1337 902">(a) will be able to process more than 2 500 people equivalent capacity or 750kL each day; or <li data-bbox="491 913 1337 981">(b) will have capacity to store more than 1kt of sewage, sludge or effluent; or <li data-bbox="491 992 1066 1025">(c) will incinerate sewage or sewage products; or <li data-bbox="491 1037 1321 1104">(d) is to be within 100m of a body of water, whether natural or artificial, waterway or wetland; or <li data-bbox="491 1115 1337 1182">(e) is to be in an area with a high watertable, highly permeable soils, sodic soils or saline soils; or <li data-bbox="491 1193 1098 1227">(f) is to be in a domestic water supply catchment; or <li data-bbox="491 1238 1337 1373">(g) is to be within 2km of a residential zone and, taking into consideration the topography and local weather conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, vermin attracted, lights, traffic or waste
6	proposal for construction of a correctional centre
7	proposal for construction of a petroleum storage facility with a storage capacity greater than 500kL of petroleum products at 1 time
8	proposal for construction of a permanent public entertainment or sporting venue, including a motor sports facility or venue where motor sports are held, if the venue will— <ul style="list-style-type: none"> <li data-bbox="491 1630 890 1664">(a) hold at least 2 000 people; or <li data-bbox="491 1675 1321 1709">(b) hold less than 2 000 people and be within 1.5km of a residential zone

Schedule 4
Part 4.2

Development proposals in impact track because of need for EIS
Development proposals requiring EIS—activities

column 1 item	column 2 development proposal
9	proposal for use of land for landfill if— (a) the intended capacity of the land is more than 5kt each year, or 20kt in total; or (b) the landfill will be— (i) within 100m of a body of water (whether natural or artificial), waterway or wetland; or (ii) in an area with a high watertable, highly permeable soils, sodic soils or saline soils; or (iii) in a domestic water supply catchment; or (iv) within 2km of a residential zone and, taking into consideration the topography and local weather conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, vermin attracted, lights, traffic or waste
10	proposal for the construction of a waste management facility for— (a) the destruction of waste, including biological, veterinary, medical, clinical, dental, quarantine and municipal waste, by incineration (that is, thermal oxidation); or (b) the sterilisation of clinical waste; or (c) the storage, treatment, disposal, processing, recycling, recovery, use or reuse of regulated waste

column 1 item	column 2 development proposal
11	<p>proposal for a transfer station or material recycling facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, that—</p> <ul style="list-style-type: none">(a) is intended to handle more than 30kt of waste each year; or(b) is to be within 100m of a body of water (whether natural or artificial), waterway or wetland; or(c) is to be within 2km of a residential zone and, taking into consideration the topography and local weather conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, vermin attracted, lights or traffic
12	<p>proposal for construction of a wastewater treatment plant that will have a capacity to reuse more than 3ML of wastewater (including effluent but excluding stormwater) each year and is to be—</p> <ul style="list-style-type: none">(a) within 100m of a body of water (whether natural or artificial), waterway or wetland; or(b) in an area with a high watertable or highly permeable soils; or(c) in a domestic water supply catchment; or(d) within 2km of a residential zone and, taking into consideration the topography and local weather conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, vermin attracted, lights, traffic or waste

1 **Part 4.3** **Development proposals requiring**
2 **EIS—areas and processes**

column 1 item	column 2 proposal
1	<p>proposal that is likely to adversely impact on the conservation status of—</p> <ul style="list-style-type: none">(a) a species or ecological community that is endangered; or(b) a species that is vulnerable; or(c) a species that is protected; or(d) a species with special protection status; or(e) a species or ecological community if the flora and fauna committee has specified criteria for assessing whether the committee should recommend the making of a declaration under the <i>Nature Conservation Act 1980</i>, section 38 (Declaration of species, community or process) in relation to the species or ecological community; or <p><i>Note</i> Criteria are specified under the <i>Nature Conservation Act 1980</i>, s 35. An instrument under that Act, s 35 is a disallowable instrument and must be notified, and presented to the Legislative Assembly, under the Legislation Act.</p> <ul style="list-style-type: none">(f) an endangered species, an endangered population, an endangered ecological community, a critically endangered species, a critically endangered ecological community or presumed extinct under the <i>Threatened Species Conservation Act 1995</i> (NSW), if the potential impact of the proposal will be on the species or community in New South Wales
2	proposal that is likely to contribute to a threatening process in relation to a species or an ecological community
3	<p>proposal involving—</p> <ul style="list-style-type: none">(a) the clearing of more than 0.5ha of native vegetation; or(b) the clearing of native vegetation if the clearing could have a significant impact on land identified in a nature conservation strategy, or action plan, under the <i>Nature Conservation Act 1980</i> or a biodiversity corridor

column 1 item	column 2 proposal
4	proposal with the potential to have a significant impact on the management objectives for land reserved under section 309 for the purpose of a wilderness area, national park, nature reserve or special purpose reserve
5	proposal with the potential to have a significant impact on— (a) a domestic water supply catchment; or (b) a water use purpose mentioned in the territory plan, appendix 1 (Water use and catchment policies); or (c) a prescribed environmental value mentioned in the territory plan, appendix 1 of a natural waterway or aquifer
6	proposal that is likely to result in environmentally significant water extraction or consumption, other than a proposal for the use of a stormwater system or other wastewater reuse scheme that is part of a residential subdivision and is a water sensitive urban design
7	proposal with the potential to have a significant impact on the heritage significance of a place or object registered, or nominated for provisional registration, under the <i>Heritage Act 2004</i>
8	proposal involving— (a) land registered in the register of contaminated sites kept under the <i>Environment Protection Act 1997</i> ; or (b) land potentially contaminated in a way that is causing, or is likely to cause, a significant risk of harm to people’s health or the environment
9	proposal with the potential to adversely affect the integrity of a site where significant environmental or ecological scientific research is being conducted by a government entity, a university or another entity prescribed by regulation
10	proposal for an on-going commercial, aquatic, recreational activity on an urban lake or waterway
11	proposal to vary a lease to change its concessional status

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Note A development application for a development proposal must include an EIS in relation to the proposal if the impact track applies to it because of a declaration under s 124 (Declaration by Public Health Act Minister affects assessment track).

Dictionary

(see s 3)

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

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- AAT
- appoint
- commissioner for surveys
- conservator of flora and fauna
- contravene
- corporation
- document
- domestic partner (see s 169 (1))
- emergency services authority
- entity
- environment protection authority
- Executive
- exercise
- function
- may (see s 146)
- month
- must (see s 146)
- national capital authority
- national capital plan
- person
- quarter
- registered surveyor
- registrar-general
- territory land
- the Territory
- under.

- 1 **Aboriginal object**—see the *Heritage Act 2004*, section 9.
- 2 **Aboriginal place**—see the *Heritage Act 2004*, section 9.
- 3 **act** includes omission.
- 4 **additional rent** means amounts payable under a lease in addition to
5 rent owed under the lease because rent or other amounts owing
6 under the lease have not been paid as required.
- 7 **approval holder** means a person whose application for development
8 approval has been approved (whether subject to a condition or
9 otherwise) if the approval is in force.
- 10 **associate**, of a person, means—
- 11 (a) the person’s business partner; or
- 12 (b) a close friend of the person; or
- 13 (c) a family member of the person.
- 14 **associated document**, for part 3.6 (Public register and associated
15 documents)—see section 29.
- 16 **authorised person**, for part 11.4 (Rectification work)—see
17 section 361 (1).
- 18 **authority** means the Planning and Land Authority established under
19 section 9 (1).
- 20 **authority website** means the website declared under section 414.
- 21 **background papers**, for part 5.3 (Variations of territory plan other
22 than technical amendments)—see section 57.
- 23 **biodiversity corridor**, for schedule 4 (Development proposals in
24 impact track because of need for EIS)—see schedule 4, section 4.1.
- 25 **building and development provision**, for chapter 9 (Leases and
26 licences)—see section 226.
- 27 **certificate of compliance** means a certificate issued under
28 section 289.

- 1 **certification of occupancy** means a certificate issued under the
2 *Building Act 2004*, section 69.
- 3 **change of use charge**, for a variation of a lease, means the change
4 of use charge for the lease worked out under section 270.
- 5 **chief executive officer** means the chief executive officer of the land
6 agency.
- 7 **chief planning executive** means the Chief Planning Executive
8 appointed under section 20.
- 9 **clearing**, of native vegetation, for schedule 4 (Development
10 proposals in impact track because of need for EIS)—see the *Nature*
11 *Conservation Act 1980*, section 74.
- 12 **code** means a code in the territory plan.
- 13 **code requirements**—see section 54.
- 14 **code track**—see section 111 (2) (a).
- 15 *Note* Div 7.2.2 deals with the code track.
- 16 **code variation**, for part 5.4 (Plan variations—technical
17 amendments)—see section 86 (b).
- 18 **complainant**—see section 334 (1) (b).
- 19 **complaint**, for chapter 11 (Compliance), means a complaint under
20 section 334.
- 21 **completed**, for an EIS—see section 203.
- 22 **concept plan** means a concept plan under section 92.
- 23 **concessional lease**—see section 227.
- 24 **connected**, for part 11.8 (Enforcement)—see section 379.
- 25 **conservation requirement**—see the *Heritage Act 2004*, dictionary.
- 26 **consolidation**, for chapter 9 (Leases and licences)—see section 226.

- 1 **construct**, for a building or structure, includes put up the building or
2 structure.
- 3 **consultation comments**, for part 5.3 (Variations of territory plan
4 other than technical amendments)—see section 62 (1) (b).
- 5 **consultation notice**, for part 5.3 (Variations of territory plan other
6 than technical amendments)—see section 62 (1).
- 7 **consultation period**, for part 5.3 (Variations of territory plan other
8 than technical amendments)—see section 62 (1) (a).
- 9 **controlled activity**—see section 332.
- 10 **controlled activity order** means an order made under part 11.3.
- 11 **correctional centre**, for schedule 4 (Development proposals in
12 impact track because of need for EIS)—see schedule 4.
- 13 **corresponding plan variation**, for part 5.3 (Variations of territory
14 plan other than technical amendments)—see section 57.
- 15 **custodian**—see section 326.
- 16 **custodianship map** means the map created and notified under
17 section 327.
- 18 **deal** with a lease, for chapter 9 (Leases and licences)—see
19 section 226.
- 20 **deciding** a development application means approving (whether
21 subject to a condition or otherwise) or refusing the development
22 application.
- 23 **decision-maker**, for chapter 13 (Review of decisions)—see
24 section 400.
- 25 **declared site**—see the *Tree Protection Act 2005*, dictionary.
- 26 **defined period**, for part 10.6 (Leases for public land)—see
27 section 328.

- 1 **designated area**—see the *Australian Capital Territory (Planning*
2 *and Land Management) Act 1988* (Cwlth), section 4.
- 3 **development**, in relation to land—see section 7.
- 4 **development application** means an application in relation to a
5 development proposal made under chapter 7 (Development
6 approvals).
- 7 **development approval** means development approval under chapter 7
8 (Development approvals).
- 9 **development code**—see section 54 (4).
- 10 **development proposal** means a proposal for development, whether
11 in a development application or otherwise.
- 12 **development table**, for a development or proposal, means the
13 development table in the territory plan that covers the zone in which
14 the development or proposal is to take place (see s 53).
- 15 **discharge amount**, for division 9.7.2 (Exceptions for rural leases)—
16 see section 275.
- 17 **domestic water supply catchment**, for schedule 4 (Development
18 proposals in impact track because of need for EIS)—see schedule 4,
19 section 4.1.
- 20 **draft EIS**, for chapter 8 (Environmental impact statements and
21 inquiries)—see section 210 (2) (a).
- 22 **draft plan variation**—see section 59.
- 23 **ecological community**, for schedule 4 (Development proposals in
24 impact track because of need for EIS)—see the *Nature Conservation*
25 *Act 1980*, dictionary.
- 26 **EIS**—see section 202.
- 27 **eligible entity**, for chapter 13 (Review of decisions)—see
28 section 400.

1 **endangered**, for schedule 4 (Development proposals in impact track
2 because of need for EIS)—see the *Nature Conservation Act 1980*,
3 dictionary.

4 **environment**—each of the following is part of the environment:

- 5 (a) the soil, atmosphere, water and other parts of the earth;
6 (b) organic and inorganic matter;
7 (c) living organisms;
8 (d) structures, and areas, that are manufactured or modified;
9 (e) ecosystems and parts of ecosystems, including people and
10 communities;
11 (f) qualities and characteristics of areas that contribute to their
12 biological diversity, ecological integrity, scientific value,
13 heritage value and amenity;
14 (g) interactions and interdependencies within and between the
15 things mentioned in paragraphs (a) to (f);
16 (h) social, aesthetic, cultural and economic characteristics that
17 affect, or are affected by, the things mentioned in
18 paragraphs (a) to (f).

19 *Note* **Environmental** has a corresponding meaning to **environment** (see
20 Legislation Act, s 157).

21 **environmental impact statement** means an EIS (see s 202).

22 **error variation**, for part 5.4 (Plan variations—technical
23 amendments)—see section 86 (a).

24 **estate development plan**—see section 93.

25 **exclusion application**—see section 404 (3).

26 **exempt**, in relation to a development proposal or development,
27 means the development proposed or development is exempt from
28 requiring development approval under a development table or by
29 regulation.

1 **flora and fauna committee**, for schedule 4 (Development proposals
2 in impact track because of need for EIS), means the Flora and Fauna
3 Committee established under the *Nature Conservation Act 1980*,
4 section 13.

5 **formal error** means—

6 (a) a clerical error; or

7 (b) an error arising from an accidental slip or omission; or

8 (c) a defect of form.

9 **future public land**, for part 10.6 (Leases for public land)—see
10 section 328.

11 **future urban area** means an area of territory land identified in the
12 territory plan for future urban development.

13 **general code**—see section 54 (5).

14 **heritage direction**—see the *Heritage Act 2004*, section 62.

15 **holding period**, for division 9.7.2 (Exceptions for rural leases)—see
16 section 275.

17 **impact track**—see section 111 (2) (c).

18 *Note* Div 7.2.4 deals with the impact track.

19 **improvement**, for part 9.8 (Leases—improvements)—see
20 section 281.

21 **in** an assessment track—a development proposal is **in** an assessment
22 track if the assessment track applies to the proposal.

23 **inquiry** means an inquiry into an EIS established under section 221.

24 **inspector** means a person appointed under section 380.

25 **interested person**, for chapter 13 (Review of decisions)—see
26 section 400.

27 **land agency** means the Land Development Agency established
28 under section 30.

- 1 **land agency board** means the governing board of the land agency.
- 2 **land agency board member** means a member of the land agency
3 board.
- 4 **land management agreement** means an agreement under
5 section 276.
- 6 *Note* A reference to an instrument (including a land management agreement)
7 includes a reference to the instrument as originally made and as
8 amended (see Legislation Act, s 102).
- 9 **lease**—see section 227.
- 10 **leasehold**, of a lessee, means the land held under the lease.
- 11 **lessee**—
- 12 (a) for chapter 9 (Leases and licences)—see section 226; and
13 (b) for part 9.8 (Leases—improvements)—see section 281.
- 14 **limited consultation**, for part 5.4 (Plan variations—technical
15 amendments)—see section 89.
- 16 **major road**, for schedule 4 (Development proposals in impact track
17 because of need for EIS)—see schedule 4, section 4.1.
- 18 **management objectives**, for chapter 10 (Management of public
19 land)—see section 311.
- 20 **market value**, for chapter 9 (Leases and licences)—see section 226.
- 21 **market value lease** means a lease other than a concessional lease.
- 22 **material detriment**—see section 411.
- 23 **merit criteria**—see section 54 (1) (b) (Codes in territory plan).
- 24 **merit track**—see section 111 (2) (b).
- 25 *Note* Div 7.2.3 deals with the merit track.
- 26 **municipal waste**, for schedule 4 (Development proposals in impact
27 track because of need for EIS)—see schedule 4.

- 1 ***native vegetation***, for schedule 4 (Development proposals in impact
2 track because of need for EIS)—see the *Nature Conservation*
3 *Act 1980*, section 73.
- 4 ***natural environment***, for schedule 3 (Management objectives for
5 public land)—see section 311 (6).
- 6 ***nominal rent lease***, for chapter 9 (Leases and licences)—see
7 section 226.
- 8 ***objectives***, for a zone, means the objectives in the territory plan for
9 the zone (see s 50 (1) (b) and s 52).
- 10 ***occupier***, for part 11.8 (Enforcement)—see section 379.
- 11 ***offence***, for part 11.8 (Enforcement)—see section 379.
- 12 ***ongoing controlled activity order***—see section 349.
- 13 ***original application***, for division 7.3.10 (Reconsideration of
14 development applications for approval)—see section 185 (1) (a).
- 15 ***original decision***, for division 7.3.10 (Reconsideration of
16 development applications for approval)—see section 185 (1) (a).
- 17 ***plan*** means the territory plan under section 45.
- 18 ***planning and land authority*** means the Planning and Land
19 Authority established under section 9 (1).
- 20 ***planning report***—see section 96.
- 21 ***planning strategy*** means the planning strategy under section 104.
- 22 ***plan of management***, for chapter 10 (Management of public
23 land)—see section 307.
- 24 ***plan variation***, for part 5.3 (Variations of territory plan other than
25 technical amendments)—see section 57.
- 26 ***precinct code***—see section 54 (3).
- 27 ***premises***, for part 11.8 (Enforcement)—see section 379.

- 1 ***prohibited***—
- 2 (a) development is ***prohibited*** if the development is prohibited
- 3 under the relevant development table; and
- 4 (b) a development proposal is ***prohibited*** if any part of the
- 5 development proposed by the proposal is prohibited.
- 6 ***proponent***—
- 7 (a) for a development proposal, for chapter 8 (Environmental
- 8 impact statements and inquiries)—see section 200; or
- 9 (b) for part 10.4 (Plans of management for public land)—see
- 10 section 312.
- 11 ***protected***, for schedule 4 (Development proposals in impact track
- 12 because of need for EIS)—see schedule 4, section 4.1.
- 13 ***provision*** of a lease, for chapter 9 (Leases and licences)—see
- 14 section 226.
- 15 ***public availability notice***, for a draft plan variation, for part 5.3
- 16 (Variations of territory plan other than technical amendments)—see
- 17 section 69.
- 18 ***public land*** means land identified by the territory plan as public
- 19 land.
- 20 ***publicly notifies***, for chapter 7 (Development applications)—see
- 21 section 149.
- 22 ***public register*** means the register kept by the planning and land
- 23 authority under section 26.
- 24 ***reconsideration application***, for division 7.3.10 (Reconsideration of
- 25 development applications for approval)—see section 185 (3).
- 26 ***rectification work***, for part 11.4—see section 358.
- 27 ***registered interest***, in a lease, means an interest in the lease
- 28 registered under the *Land Titles Act 1925*.

- 1 **registered lease**, for chapter 9 (Leases and licences)—see
2 section 226.
- 3 **registered proprietor**, for chapter 9 (Leases and licences)—see
4 section 226.
- 5 **registered tree**—see the *Tree Protection Act 2005*, section 9.
- 6 **regulated waste**, for schedule 4 (Development proposals in impact
7 track because of need for EIS)—see the *Environment Protection*
8 *Act 1997*, schedule 1, section 1.1A.
- 9 **relevant code**, for a development proposal, means a code that the
10 relevant development table applies to the proposal.
- 11 **relevant code requirements**, for a development proposal, means the
12 code requirements that apply to the proposal in each relevant code.
- 13 **relevant development table**, for a development proposal, means the
14 development table that applies to the proposal.
- 15 **rental lease**, for chapter 9 (Leases and licences)—see section 226.
- 16 **representation**—
- 17 (a) about a development application, means a representation made
18 under section 153; or
- 19 (b) for chapter 8 (Environmental impact statements and
20 inquiries)—see section 200.
- 21 **representative Aboriginal organisation**—see the *Heritage*
22 *Act 2004*, section 14.
- 23 **residential lease**, for chapter 9 (Leases and licences)—see
24 section 226.
- 25 **reviewable decision**—see section 400.
- 26 **rural lease**, for chapter 9 (Leases and licences)—see section 226.
- 27 **scoping document**, for chapter 8 (Environmental impact statements
28 and inquiries)—see section 206 (2) (b).

- 1 **SEA** means strategic environmental assessment.
- 2 **sewage**—see the *Water and Sewerage Act 2000*, dictionary.
- 3 **show cause notice**—
- 4 (a) for division 11.3.1 (Controlled activity orders on
5 application)—see section 343 (3); and
- 6 (b) for division 11.3.2 (Controlled activity orders on authority’s
7 initiative)—see section 346 (2).
- 8 **special protection status**, for schedule 4 (Development proposals in
9 impact track because of need for EIS)—see schedule 4, section 4.1.
- 10 **statement of planning intent**—see section 15 (Statement of
11 planning intent).
- 12 **statement of strategic directions** means the statement of strategic
13 directions in the territory plan (see s 50 and s 51).
- 14 **strategic environmental assessment**—see section 98.
- 15 **structure plan**—see section 91.
- 16 **subdivision**, for chapter 9 (Leases and licences)—see section 226.
- 17 **sublease**, for chapter 9 (Leases and licences)—see section 226.
- 18 **sublessee**, for chapter 9 (Leases and licences)—see section 226.
- 19 **sustainable development**—see section 8.
- 20 **tax** includes duty, fee or charge.
- 21 **technical amendments**—see section 86.
- 22 **territory plan** means the territory plan under section 45.
- 23 **territory plan map**—see section 50 (1) (e).
- 24 **the inter-generational equity principle**—see section 8.
- 25 **the precautionary principle**—see section 8.

