

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Development Amendment Bill 2009 (No 2)

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2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Development Amendment Bill 2009 (No 2)

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Planning and Development Amendment Act 2009*
4 (*No 2*).

5 **2 Commencement**

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

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

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

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

1 **Part 2** **Planning and Development**
2 **Act 2007**

3 **3 Legislation amended—pt 2**

4 This part amends the *Planning and Development Act 2007*.

5 **4 Minister's powers in relation to draft plan variations**
6 **Section 76 (5) and (6)**

7 *substitute*

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11 withdrawn.

12 (6) The following are notifiable instruments:

- 13 (a) an approval under subsection (3) (a);
14 (b) a direction under subsection (3) (b);
15 (c) a notice under subsection (5).

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

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

19 **5 Definitions—pt 5.4**
20 **Section 86, definition of *limited consultation***

21 *substitute*

22 *limited consultation*—see section 90.

1 **6 What are *technical amendments* of territory plan?**
2 **Section 87 (e)**

3 *substitute*

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

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

8 **Examples—obsolete or redundant things**

9 1 a structure plan that is no longer relevant because all the land that the
10 structure plan applies to ceases to be in a future urban area

11 2 a provision of the territory plan that has become redundant because of
12 the enactment of a law that applies in the Territory

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

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

18 **7 Is consultation needed for technical amendments?**
19 **New section 88 (1) (c)**

20 *insert*

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

23 **8 Making technical amendments**
24 **Section 89 (2)**

25 *substitute*

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

9 New section 116A

insert

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

- (1) This section applies if—
- (a) an authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and
 - (b) there is a development proposal in relation to the land; and
 - (c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3); and
 - (d) if a development application were made for both the development proposal and a use mentioned in subsection (2) (b), the application would be assessed in the code track.
- (2) The person proposing the development proposal must apply for development approval for—
- (a) the development proposal; and
 - (b) any use (the *proposed use*) of the land, or a building or structure on the land, that—
 - (i) is an authorised use of land, or a building or structure on the land that is exempt under section 134 (1); and
 - (ii) is intended to continue to apply to the land after the development proposal is carried out.

- 1 (3) In deciding the development application in the code track, the
2 decision-maker—
- 3 (a) must not refuse to approve the application only on the ground
4 that, if the application were an application only for the
5 proposed use the application would be refused; and
- 6 (b) must not approve the application on a condition only because,
7 if the application were an application only for the proposed use
8 the application would be approved on the condition.

9 **Example**

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

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

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

24 **10 New section 120A**

25 *insert*

26 **120A Merit track—effect of s 134 on development approval**

- 27 (1) This section applies if—
- 28 (a) an authorised use of the land, or an existing building or
29 structure on the land, is exempt under section 134 (1) (Exempt
30 development—authorised use); and
- 31 (b) there is a development proposal in relation to the land; and

- 1 (c) if the proposed development were carried out, the authorised
2 use of the land, or an existing building or structure on the land,
3 would stop being exempt under section 134 (2) or (3); and
- 4 (d) if a development application were made for both the
5 development proposal and a use mentioned in
6 subsection (2) (b), the application would be considered in the
7 merit track.
- 8 (2) The person proposing the development proposal must apply for
9 development approval for—
- 10 (a) the development proposal; and
- 11 (b) any use (the *proposed use*) of the land, or a building or
12 structure on the land, that—
- 13 (i) is an authorised use of land, or a building or structure on
14 the land that is exempt under section 134 (1); and
- 15 (ii) is intended to continue to apply to the land after the
16 development proposal is carried out.
- 17 (3) In deciding the development application in the merit track, the
18 decision-maker—
- 19 (a) must not refuse to approve the application only on the ground
20 that, if the application were an application only for the
21 proposed use the application would be refused; and

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

4 **Example**

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

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

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).

23 **11 New section 129A**

24 *insert*

25 **129A Impact track—effect of section 134 on development**
26 **approval**

- 27 (1) This section applies if—
28 (a) an authorised use of the land, or an existing building or
29 structure on the land, is exempt under section 134 (1) (Exempt
30 development—authorised use); and
31 (b) there is a development proposal in relation to the land; and

- 1 (c) if the proposed development were carried out, the authorised
2 use of the land, or an existing building or structure on the land,
3 would stop being exempt under section 134 (2) or (3); and
- 4 (d) if a development application were made for both the
5 development proposal and a use mentioned in
6 subsection (2) (b), the application would be assessed in the
7 impact track.
- 8 (2) The person proposing the development proposal must apply for
9 development approval for—
- 10 (a) the development proposal; and
- 11 (b) any use (the *proposed use*) of the land, or a building or
12 structure on the land, that—
- 13 (i) is an authorised use of land, or a building or structure on
14 the land that is exempt under section 134 (1); and
- 15 (ii) is intended to continue to apply to the land after the
16 development proposal is carried out.
- 17 (3) In deciding the development application in the impact track, the
18 decision-maker—
- 19 (a) must not refuse to approve the application only on the ground
20 that, if the application were an application only for the
21 proposed use the application would be refused; and

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

4 **Example**

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

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

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 **12 New section 131B**

22 *insert*

23 **131B Development proposal for lease variation other than in**
24 **designated area**

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

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

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

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

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

6 **13 Section 133**

7 *substitute*

8 **133 What is an exempt development?**

9 In this Act:

10 ***exempt development***—

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

13 (i) the relevant development table; or

14 *Note 1* Development tables are dealt with in s 54.

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

16 (ii) section 134; or

17 (iii) a regulation; but

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

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

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

3 **Example—condition that provision complied with**

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

6 **Example—not a condition that provision complied with**

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

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

11 *Note 2* 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 **14 Exempt development—authorised use**
15 **Section 134 (6) (b)**

16 *substitute*

- 17 (b) the licence or permit—
18 (i) has expired and has not been renewed on an application
19 to renew the licence or permit made within 6 months
20 after the day of expiry; or
21 (ii) ends other than by expiring.

1 **15 Section 134, new note**

2 *after section 134 (8), insert*

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

12 **16 What is *publicly notifies* for ch 7?**
13 **Section 152 (2) (a)**

14 *substitute*

15 (a) under section 155 (Major public notification) and, if the
16 development proposal is, or includes, a lease variation—
17 section 154 (Public notice to registered interest holders) (if
18 applicable);

19 **17 New section 154 (3)**

20 *insert*

21 (3) The validity of a development approval is not affected by a failure
22 by the planning and land authority to comply with this section.

1 **18 New division 7.3.4A**

2 *insert*

3 **Division 7.3.4A Notice of development applications to**
4 **registrar-general**

5 **157A Notice of development applications**

6 (1) The planning and land authority must give written notice of each
7 development application lodged with the authority to the
8 registrar-general for recording under the *Land Titles Act 1925*,
9 part 8A (Record of administrative interests).

10 (2) The notice under subsection (1) must include the following:

- 11 (a) a description of the development;
- 12 (b) the assessment track under which the development is to be
13 assessed;
- 14 (c) the approval status of the application;

15 **Examples—approval status**

- 16 1 pending
- 17 2 approved
- 18 3 approved on conditions
- 19 4 refused
- 20 5 under review by the ACAT

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

24 (d) anything else prescribed by regulation.

25 (3) If the approval status of a development application changes, the
26 planning and land authority must give written notice to the
27 registrar-general of the change.

1 **19 Direction that development applications be referred to**
2 **Minister**
3 **Section 158 (3)**

4 *substitute*

5 (3) If the Minister gives a direction under subsection (1) in relation to
6 an application, the planning and land authority—

7 (a) must take no further action that would lead to a decision by the
8 authority on the application; but

9 (b) may continue to take procedural steps in relation to the
10 application, unless the Minister's direction under
11 subsection (1) directs the authority not to take a procedural
12 step.

13 **Examples—procedural steps**

14 1 entity referral under div 7.3.3 (Referral of development applications)

15 2 public notification under div 7.3.7 (Extensions of time for deciding
16 development applications)

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

20 **20 Notice of approval of application**
21 **Section 170 (1) (c)**

22 *substitute*

23 (c) if the application approved does not relate to a variation of a
24 lease—to the registrar-general for recording under the *Land*
25 *Titles Act 1925*, part 8A (Record of administrative interests);
26 and

1 **21 When development approvals take effect—ACAT review**
2 **Section 178 (1) (b)**

3 *substitute*

4 (b) application is made to the ACAT for review of the decision to
5 approve the application and the ACAT confirms or varies the
6 decision, or makes a substitute decision;

7 **22 Section 178 (2)**

8 *after*

9 development application

10 *insert*

11 , as confirmed, varied or substituted by the ACAT,

12 **23 Section 178 (2) (b)**

13 *substitute*

14 (b) the day that the confirmation, variation or substitution by the
15 ACAT takes effect under the *ACT Civil and Administrative*
16 *Tribunal Act 2008*, section 69 (Effect of orders for
17 administrative review).

18 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 69
19 provides that an order of the ACAT made under s 68 (3) is taken
20 to be a decision of the decision-maker and takes effect from the
21 day the order is made unless the ACAT orders otherwise.

1 **24** **When development approval takes effect—activity not**
2 **allowed by lease**
3 **Section 179 (2)**

4 *after*

5 development application

6 *insert*

7 or, if an application for review has been made in relation to the
8 approval, the approval as confirmed, varied or substituted by the
9 ACAT,

10 **25** **Section 179 (2) (c) excluding note**

11 *substitute*

12 (c) if an application for review has been made in relation to the
13 approval—

- 14 (i) the day that the confirmation, variation or substitution by
15 the ACAT takes effect under the *ACT Civil and*
16 *Administrative Tribunal Act 2008*, section 69 (Effect of
17 orders for administrative review); or

18 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 69
19 provides that an order of the ACAT made under s 68 (3) is
20 taken to be a decision of the decision-maker and takes
21 effect from the day the order is made unless the ACAT
22 orders otherwise.

- 23 (ii) the day after the day the application for review is
24 withdrawn, dismissed or struck out.

1 **26 When development approval takes effect—condition to**
2 **be met**
3 **Section 180 (2)**

4 *after*

5 development application

6 *insert*

7 or, if an application for review has been made in relation to the
8 approval, the approval as confirmed, varied or substituted by the
9 ACAT,

10 **27 Section 180 (2) (c)**

11 *substitute*

12 (c) if an application for review has been made in relation to the
13 approval—

- 14 (i) the day that the confirmation, variation or substitution by
15 the ACAT takes effect under the *ACT Civil and*
16 *Administrative Tribunal Act 2008*, section 69 (Effect of
17 orders for administrative review); or

18 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 69
19 provides that an order of the ACAT made under s 68 (3) is
20 taken to be a decision of the decision-maker and takes
21 effect from the day the order is made unless the ACAT
22 orders otherwise.

- 23 (ii) the day after the day the application for review is
24 withdrawn, dismissed or struck out.

1 **28** **When development approval takes effect—application for**
2 **reconsideration**
3 **Section 182 (2)**

4 *after*

5 development application

6 *insert*

7 or, if an application for review has been made in relation to the
8 decision to confirm the original decision, the decision as confirmed,
9 varied or substituted by the ACAT,

10 **29** **Section 182 (2) (c)**

11 *substitute*

12 (c) if an application for review has been made in relation to the
13 decision to confirm the original decision—

- 14 (i) the day that the confirmation, variation or substitution by
15 the ACAT takes effect under the *ACT Civil and*
16 *Administrative Tribunal Act 2008*, section 69 (Effect of
17 orders for administrative review); or

18 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 69
19 provides that an order of the ACAT made under s 68 (3) is
20 taken to be a decision of the decision-maker and takes
21 effect from the day the order is made unless the ACAT
22 orders otherwise.

- 23 (ii) the day after the day the application for review is
24 withdrawn, dismissed or struck out.

1 **30 End of development approvals other than lease variations**
2 **Section 184 (2) (c)**

3 *substitute*

4 (c) if no period is stated in the approval for starting the
5 development or any stage of the development—

6 (i) the development or stage of development has not been
7 started 2 years after the day the approval takes effect; or

8 (ii) if an appeal is made to the ACAT or a court in relation to
9 the approval—the development or stage of the
10 development has not started 2 years after the day the
11 appeal ends; or

12 *Note* **Ends**—see the dictionary.

13 **31 New section 184 (2) (e) (iii)**

14 *insert*

15 (iii) if an appeal is made to the ACAT or a court in relation to
16 the approval—

17 (A) 2 years after the day the appeal ends; or

18 (B) if an extension of the 2-year period is granted under
19 this section—the extended period after the appeal
20 ends.

21 *Note* **Ends**—see the dictionary.

22 **32 Section 184 (2) (f)**

23 *substitute*

24 (f) if the approval relates to land comprised in a lease that requires
25 the development to be completed within a stated time—

26 (i) the development is not completed within the stated time;
27 or

- 1 (ii) if the stated time has been extended under
2 section 298B—the development is not completed within
3 the extended time; or

4 **33 Section 184 (4), definition of *prescribed period*,**
5 **paragraph (b)**

6 *substitute*

- 7 (b) if no time is stated in the approval for finishing the
8 development—
9 (i) the period ending 2 years after the day the development
10 begins; or
11 (ii) if an appeal is made to the ACAT or a court in relation to
12 the approval—the period ending 2 years after the day the
13 appeal ends.

14 *Note* **Ends**—see the dictionary.

15 **34 End of development approvals for lease variations**
16 **Section 185 (2) (b) (except note)**

17 *substitute*

- 18 (b) at the end of—
19 (i) the period of 2 years starting on the day after the day the
20 approval takes effect; or
21 (ii) if an appeal is made to the ACAT or a court in relation to
22 the approval—the period of 2 years starting on the day
23 after the day the appeal ends.

24 *Note* **Ends**—see the dictionary.

1 **35 End of development approvals for use under lease**
2 **without lease variation, licence or permit**
3 **Section 186 (3) and (4)**

4 *substitute*

5 (3) If only 1 use is allowed under the development approval, the
6 development approval ends if the use in accordance with the
7 development approval does not begin or happen before the end of—

8 (a) the period of 2 years starting on the day after the day the
9 approval takes effect; or

10 (b) if an appeal is made to the ACAT or a court in relation to the
11 approval—the period of 2 years starting on the day after the
12 day the appeal ends.

13 *Note Ends*—see the dictionary.

14 (4) If more than 1 use is allowed under the development approval, the
15 development approval ends if none of the uses in accordance with
16 the development approval begin or happen before the end of—

17 (a) the period of 2 years starting on the day after the day the
18 approval takes effect; or

19 (b) if an appeal is made to the ACAT or a court in relation to the
20 approval—the period of 2 years starting on the day after the
21 day the appeal ends.

22 *Note Ends*—see the dictionary.

1 **36 End of development approvals for use under licence or**
2 **permit**
3 **Section 187 (2) (d), except note**

4 *substitute*

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

8 (e) the licence or permit ends other than by expiring.

9 **37 Section 187 (3)**

10 *substitute*

11 (3) The development approval ends if use in accordance with the
12 development approval does not begin or happen before the end of—

13 (a) the period of 2 years starting on the day after the day the
14 approval takes effect; or

15 (b) if an appeal is made to the ACAT or a court in relation to the
16 approval—the period of 2 years starting on the day after the
17 day the appeal ends.

18 *Note Ends*—see the dictionary.

19 **38 Applications to amend development approvals**
20 **Section 197 (1), new note**

21 *insert*

22 *Note* If the development proposal changes in accordance with the
23 development approval condition requiring the change, the change is
24 covered by the approval, so this section does not apply.

1 **39 Deciding applications to amend development approvals**
2 **Section 198 (1), example**

3 *omit*

4 floor

5 *substitute*

6 room

7 **40 Section 198 (1), new note 3**

8 *insert*

9 *Note 3* The planning and land authority must decide whether to amend the
10 development approval as soon as possible (see Legislation Act, s 151B).

11 **41 Section 198 (2)**

12 *substitute*

13 (2) However, section 162 (3) (Deciding development applications) does
14 not apply to the application.

15 (2A) The planning and land authority must refuse to amend the
16 development approval if satisfied that—

17 (a) if the original proposal was in the code track—the changed
18 development proposal would be in the merit track or impact
19 track; or

20 (b) if the original proposal was in the merit track—the changed
21 development proposal would be in the impact track; or

22 (c) the changed development proposal would be in breach of a
23 condition on the approval imposed (rather than confirmed or
24 varied) by a court or tribunal.

- 1 **42** **Development applications for developments undertaken**
2 **without approval**
3 **New section 205 (1A)**
- 4 *insert*
- 5 (1A) If the development becomes an exempt development—
- 6 (a) the development is taken to have been an exempt development
7 since the development was started; but
- 8 (b) the exemption of the development does not affect any
9 proceeding under this part, whether or not the proceeding starts
10 before the development became exempt.
- 11 **43** **Definitions—ch 9**
12 **Section 234, definition of *rental lease***
- 13 *omit*
- 14 nominal
- 15 *substitute*
- 16 a nominal
- 17 **44** **Meaning of *concessional lease* and *lease*—Act**
18 **Section 235 (1), definition of *concessional lease*,**
19 **paragraph (a)**
- 20 *omit*
- 21 to the Territory

1 **45 Section 235 (2)**

2 *substitute*

3 (2) For subsection (1), definition of *concessional lease*, paragraph (a)—

4 (a) a payment has been *made* if it was paid to the Territory, a
5 territory entity, a Commonwealth entity or the entity that
6 originally granted the lease; and

7 (b) it does not matter whether the consideration for the grant of the
8 lease was paid as a lump sum or is payable under the lease as
9 rent.

10 **46 Section 235 (3), new definitions**

11 *insert*

12 *Commonwealth entity* means—

13 (a) the Commonwealth; or

14 (b) a Commonwealth authority under the *Commonwealth*
15 *Authorities and Companies Act 1997 (Cwlth)*; or

16 (c) a Commonwealth company under the *Commonwealth*
17 *Authorities and Companies Act 1997 (Cwlth)*.

18 *territory entity* means—

19 (a) a territory authority; or

20 (b) a territory instrumentality; or

21 (c) a territory-owned corporation.

47 New section 235 (4)

insert

- (4) A lease granted before the commencement of this subsection for which a payment has been made under subsection (1) (a) (i), whether before or after the commencement of that subsection, is taken not to be a concessional lease, starting from the day the payment was made.

48 New section 238A

insert

238A Lease conditional on approval for stated development

- (1) This section applies to a lease granted under section 238 if—
- (a) a provision of the lease requires the lessee to obtain the approval of the planning and land authority to undertake development on the land comprised in the lease; and
 - (b) the development is exempt development.
- (2) The lessee does not require the planning and land authority's approval for the development.

**49 Restriction on direct sale by authority
Section 240 (2)**

substitute

- (2) The Executive may approve the grant by direct sale of a lease other than in accordance with criteria prescribed if satisfied that—
- (a) the grant meets 1 or more of the grant objectives; and
 - (b) a grant by a means other than direct sale—
 - (i) is not likely to meet any of the grant objectives; or

- 1 (ii) may meet 1 or more of the grant objectives but is unlikely
2 to meet the objective to the same extent as the grant by
3 direct sale of the lease.

4 **50 Section 240 (4), new definition of *grant objective***

5 *insert*

6 ***grant objective***—each of the following is a ***grant objective***:

- 7 (a) to benefit the economy of the ACT or region;
8 (b) to contribute to the environment, or social or cultural features
9 in the ACT;
10 (c) to introduce new skills, technology or services in the ACT;
11 (d) to contribute to the export earnings and import replacement of
12 the ACT or region;
13 (e) to facilitate the achievement of a major policy objective.

14 **51 Payment for leases**
15 **Section 246 (2) (a)**

16 *omit*

17 the full market

18 *substitute*

19 not less than the market

20 **52 Failure to accept and execute lease**
21 **Section 250 (4)**

22 *omit*

23 a copy of

1 **53 Restrictions on dealings with certain leases**
 2 **New section 251 (1) (c) (iii) and (iv)**

- 3 *insert*
- 4 (iii) a lease—
- 5 (A) that was offered for sale under section 238 (1) (a) or
 6 (c) but not sold; and
- 7 (B) for which not less than the market value was paid
 8 for the subsequent direct sale; or
- 9 (iv) a lease—
- 10 (A) that was sold under section 238 (1) (c) but the
 11 contract of sale was rescinded or otherwise ended
 12 before the lease was granted under the contract; and
- 13 (B) for which not less than the market value was paid
 14 for the subsequent direct sale; or

15 **54 New section 251 (1A)**

- 16 *insert*
- 17 (1A) This section does not apply in relation to the following leases:
- 18 (a) a concessional lease;
- 19 (b) a rural lease.

20 **55 Decision on rent payout lease variation application**
 21 **Section 272B (1) (a)**

- 22 *omit*
- 23 nominal
- 24 *substitute*
- 25 a nominal

- 1 **56 Section 272B (3)**
- 2 *omit*
- 3 planning and development authority
- 4 *substitute*
- 5 planning and land authority
- 6 **57 Power to decide rent payout applications deemed refused**
- 7 **Section 272D (2)**
- 8 *omit*
- 9 nominal
- 10 *substitute*
- 11 a nominal
- 12 **58 Lease to be varied to pay out rent**
- 13 **Section 273 (3)**
- 14 *omit*
- 15 rent of 5 cents each year
- 16 *substitute*
- 17 nominal rent

1 **59 Dealings with rural leases**
2 **Section 284 (4)**

3 *substitute*

4 (4) The planning and land authority must consent under this section to a
5 dealing in relation to a lease if—

6 (a) either—

7 (i) the lessee's domestic partner or child is the person to
8 whom—

9 (A) the lease is being assigned or transferred; or

10 (B) the land comprised in the lease, or part of it, is
11 sublet; or

12 (C) possession of the land comprised in the lease, or
13 part of it, is being given; or

14 (ii) the holding period for the lease has ended; and

15 (b) if section 283 applies to the dealing—the person to whom the
16 lease is to be granted has entered into an agreement with the
17 Territory in accordance with section 283.

18 **60 Transfer of land subject to building and development**
19 **provision**
20 **New section 298 (2) (b) (v)**

21 *before the examples, insert*

22 (v) the authority is satisfied that the transfer or assignment
23 (the *relevant transfer or assignment*) of the lease is—

24 (A) by the Territory, a territory entity, the
25 Commonwealth or a Commonwealth entity (each of
26 which is an *entity*); and

27 (B) within the entity's functions; and

- 1 (C) necessary because of a change in a policy of the
2 Territory, the Commonwealth or the entity that
3 affects more than 1 transfer or assignment, or
4 potential transfer or assignment, including the
5 relevant transfer or assignment.

6 **61 New section 298 (6)**

7 *insert*

8 (6) In this section:

9 ***Commonwealth entity*** means—

10 (a) a Commonwealth authority under the *Commonwealth*
11 *Authorities and Companies Act 1997 (Cwlth)*; or

12 (b) a Commonwealth company under the *Commonwealth*
13 *Authorities and Companies Act 1997 (Cwlth)*.

14 ***territory entity*** means—

15 (a) a territory authority; or

16 (b) a territory instrumentality; or

17 (c) a territory-owned corporation.

18 **62 Section 298A heading**

19 *substitute*

20 **298A Application for extension of time to commence or**
21 **complete works**

1 **63 Section 298A (1)**

2 *omit*

3 building or development

4 *substitute*

5 works

6 **64 Section 298A (3) to (5)**

7 *substitute*

8 (3) The application must be accompanied by the most recent assessment
9 notice for rates for the land.

10 **65 Section 298B heading**

11 *substitute*

12 **298B Extension of time to commence or complete works**

13 **66 Section 298B (3)**

14 *omit*

15 may approve the extension only if

16 *substitute*

17 must approve the extension if

1 **67 New section 298C**

2 *in part 9.9, insert*

3 **298C Extension of time to commence or complete works—**
4 **required fee**

- 5 (1) If the planning and land authority approves an extension of a stated
6 time under section 298B, the approval is subject to the condition
7 that the applicant pays the planning and land authority the amount,
8 or the total of the amounts, (the *required fee*) for each year, or part
9 year, of the period of extension of time approved, worked out as
10 follows:

11
$$A \times \frac{D}{365} \times B$$

12 **Example**

13 Frank applies for an extension of time for 1 October 2009 to 31 December 2011
14 (2 years and 92 days). In Frank's case, the *Planning and Development*
15 *Regulation 2008* prescribes A in the above formula to be 1 for the 1st year, 2 for
16 the 2nd year and 3 for the 3rd year of the period of extension. The fee is worked
17 out using the following formula: [1 x 365/365 x B] + [2 x 365/365 x B] + [3 x
18 92/365 x B].

19 *Note 1* The required fee may be waived under the *Financial Management*
20 *Act 1996*, s 131.

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

- 1 (2) However, if an extension (the *earlier extension*) of time has been
2 approved, in working out the required fee for a further extension—
- 3 (a) the formula for working out the required fee applies as if the
4 period of extension included each earlier extension, other
5 than—
- 6 (i) an earlier extension for which the required fee was
7 waived under the *Financial Management Act 1996*,
8 section 131; or
- 9 (ii) an earlier extension prescribed by regulation; and
- 10 (b) the required fee is reduced by—
- 11 (i) the amount of the required fee paid for each earlier
12 extension; and
- 13 (ii) if part of the required fee was waived under the *Financial*
14 *Management Act 1996*, section 131 for an earlier
15 extension—the amount waived.
- 16 (3) In this section:
- 17 **A** is the figure, not more than 5, prescribed by regulation for the
18 relevant year of the period of extension.
- 19 *Note* Power to make a statutory instrument (including a regulation) includes
20 power to make different provision for different categories (see
21 Legislation Act, s 48).
- 22 **B** is the amount of rates imposed under the *Rates Act 2004*,
23 section 14 in relation to the land for the financial year in which the
24 application is made.
- 25 **D** is the lesser of—
- 26 (a) 365; and
- 27 (b) the number of days for which the extension is sought in the
28 relevant year.

1 *period of extension* means—

- 2 (a) the period of extension applied for under subsection (2); or
3 (b) if an application seeks extensions for 2 or more building and
4 development provisions in a lease—the longest of the
5 extensions sought.

6 **68 Content of controlled activity orders**
7 **Section 358 (3) (c)**

8 *substitute*

- 9 (c) to comply with a lease provision or development agreement;
10 (ca) to restore any land, or a building or structure on the land, that
11 has been altered, damaged or fallen into disrepair in breach of a
12 lease provision or development agreement;

13 **69 New section 358 (3) (m)**

14 *insert*

- 15 (m) not to do anything that is a controlled activity whether or not a
16 controlled activity order has been, or could be, made under
17 paragraphs (a) to (l).

18 **70 Entry on notice for rectification work and monitoring**
19 **Section 391B (2)**

20 *substitute*

- 21 (2) The planning and land authority may give an occupier of the
22 premises written notice (an *intention to enter notice*) of the
23 inspector's intention to enter the premises.

71 Section 391B (6)

omit everything before paragraph (a), substitute

- (6) Before an inspector enters the premises in accordance with the intention to enter notice, the inspector must—

72 New section 395B

insert

395B Authority may ask for information about leases from commissioner for revenue

- (1) The planning and land authority may, in writing, ask the commissioner for revenue for the following information in relation to a lease:

- (a) the lessee's name;
(b) the lessee's home address or other contact address.

Note 1 The Information Privacy Principles apply to the planning and land authority (see *Privacy Act 1988* (Cwlth), s 14 to s 16).

Note 2 The planning and land authority may ask the commissioner for information in relation to more than 1 lease at a time. Words in the singular include the plural (see *Legislation Act*, s 145 (b)).

- (2) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (1).

Note See also the *Taxation Administration Act 1999*, s 97 (c) for power to disclose the information.

- (3) The planning and land authority must not make a request under subsection (1) in relation to a lease more often than—

- (a) once every 3 months; or
(b) if a regulation prescribes a longer period—once each period.

- (4) Nothing in this section prevents the planning and land authority from asking for information under section 395A.

1 (5) In this section:

2 *lease*—see section 235.

3 *lessee*—see section 234.

4 **73 When may inspector apply for rectification work order?**
5 **Section 402C (e) (ii) and (iii)**

6 *substitute*

7 (ii) an inspector, or an accompanying authorised person, has
8 been refused entry in accordance with an intention to
9 enter notice given under section 391B;

10 (iii) a consent to the entry of an inspector or an accompanying
11 authorised person to carry out the rectification work has
12 been withdrawn;

13 (iv) a consent to the entry or re-entry of an authorised person
14 to carry out or complete the rectification work has been
15 withdrawn.

16 **74 When may inspector apply for monitoring warrant?**
17 **Section 402N (b) (i)**

18 *substitute*

19 (i) an inspector has been refused entry in accordance with an
20 intention to enter notice given under section 391B;

75 New section 404A

insert

404A Action in relation to seized thing

(1) An inspector who seizes a thing under section 392D (Power to seize things on entry under search warrant) may—

(a) remove the thing from the premises where it was seized to another place; or

(b) leave the thing at the premises but restrict access to it.

(2) A person commits an offence if—

(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (1) (b); and

(b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**76 ACAT review—people who made representations etc
Section 409 (2)**

omit

4 weeks

substitute

20 working days

- 1 **77 Section 431**
- 2 *substitute*
- 3 **431 Expiry—ch 15**
- 4 (1) This chapter (other than part 15.1, part 15.5 and section 467) expires
- 5 3 years after the commencement day.
- 6 (2) Part 15.1, part 15.5 and section 467 expire 5 years after the
- 7 commencement day.
- 8 **78 Transitional—development application lodged on or after**
- 9 **commencement day for estate development plan given**
- 10 **before commencement day**
- 11 **Section 442C (1) (b)**
- 12 *omit*
- 13 planning and development authority
- 14 *substitute*
- 15 planning and land authority
- 16 **79 Transitional—status of leases and licences**
- 17 **New section 456 (1A)**
- 18 *insert*
- 19 (1A) This section also applies to the following leases granted or
- 20 continued, or purported to have been granted or continued, under the
- 21 repealed Act, whether or not in force immediately before the
- 22 commencement day:
- 23 (a) a lease granted during a consolidation or subdivision involving
- 24 the surrender of 1 or more previous leases if 1 or more of the
- 25 previous leases was a concessional lease;
- 26 (b) a concessional lease.

1	80	Section 456A heading
2		<i>substitute</i>
3	456A	Transitional—application for extension of time to
4		commence or complete development
5	81	Section 456A (1)
6		<i>omit</i>
7		building or development
8		<i>substitute</i>
9		a development
10	82	Section 456A (4)
11		<i>omit</i>
12		building and development
13		<i>substitute</i>
14		works
15	83	Section 456A (4) (b)
16		<i>omit</i>
17		section 298A (3) (b)
18		<i>substitute</i>
19		section 298C (1)

- 1 **84 Section 456A (5)**
- 2 *omit*
- 3 building and development
- 4 *substitute*
- 5 works
- 6 **85 Schedule 1, item 2, column 4**
- 7 *omit*
- 8 applicant
- 9 *substitute*
- 10 applicant for development approval
- 11 **86 Schedule 1, item 3, column 2**
- 12 *omit*
- 13 to the extent that the decision
- 14 *substitute*
- 15 to the extent that the development proposal
- 16 **87 Schedule 1, item 3, column 4**
- 17 *omit*
- 18 applicant
- 19 *substitute*
- 20 applicant for development approval

88 Schedule 1, item 4, column 2

2 *after paragraph (b), insert*

3 *Note* A decision under s 162 is reviewable only to the extent that the
4 development proposal—

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

6 (b) is not subject to a rule.

7 (see s 121 (2)).

89 Schedule 1, item 5, column 4

9 *omit*

10 applicant

11 *substitute*

12 applicant for development approval

90 Schedule 1, item 25, column 2

14 *omit*

15 nominal

16 *substitute*

17 a nominal

91 Dictionary, new definition of *end*

19 *insert*

20 *ends*—an appeal *ends* if it is decided, withdrawn or struck out.

1 **92 Dictionary, new definition of *nominal rent***

2 *insert*

3 *nominal rent* means—

4 (a) rent of 5 cents each year; or

5 (b) if another nominal amount each year is prescribed by
6 regulation—rent of the other nominal amount.

7 **93 Dictionary, definition of *nominal rent lease***

8 *omit*

9 for nominal

10 *substitute*

11 for a nominal

12 **94 Dictionary, definition of *variation*, paragraph (a) (iv)**

13 *substitute*

14 (iv) does not include—

15 (A) the surrender of the lease and the grant of a further
16 lease under section 254 (Grant of further leases); or

17 (B) a variation to a deed that is incorporated into, or
18 referred to in, the lease, if the deed is varied in a
19 way that is provided for in the deed; and

1 **Part 3** **Planning and Development**
2 **Regulation 2008**

3 **95** **Legislation amended—pt 3**

4 This part amends the *Planning and Development Regulation 2008*.

5 **96** **Exemptions from restrictions on dealings with certain**
6 **leases—Act, s 251 (3)**
7 **Section 142 (1) and note**

8 *omit*

9 **97** **Section 142 (2) (e)**

10 *omit*

11 **98** **Section 202 heading**

12 *substitute*

13 **202** **Application for extension of time—earlier extension—Act,**
14 **s 298C (2) (a) (ii)**

15 **99** **Section 203 heading**

16 *substitute*

17 **203** **Application for extension of time—general rule—Act,**
18 **s 298C (3), def A**

- 1 **100 Section 203 (3), definition of *period of extension*, and**
2 **note**
- 3 *substitute*
- 4 *period of extension*—see the Act, section 298C (3).
- 5 *Note* The Act, s 298C (3) defines A to be 5 if a lower figure is not prescribed.
- 6 **101 Section 204 heading**
- 7 *substitute*
- 8 **204 Application for extension of time—hardship reason—Act,**
9 **s 298C (3), def A**
- 10 **102 Section 204 (4), definition of *period of extension***
- 11 *substitute*
- 12 *period of extension*—see the Act, section 298C (3).
- 13 **103 Section 205 heading**
- 14 *substitute*
- 15 **205 Application for extension of time—external reason—Act,**
16 **s 298C (3), def A**
- 17 **104 Section 206 heading**
- 18 *substitute*
- 19 **206 Application for extension of time—lease transferred or**
20 **assigned in special circumstances—Act, s 298C (3), def A**

1	105	Section 207 heading
2		<i>substitute</i>
3	207	Application for extension of time—certain leases granted
4		before 31 March 2008—Act, s 298C (3), def A
5	106	Securing things seized under the Act, pt 12.3
6		Section 403
7		<i>omit</i>
8	107	Criterion 5—compliance with lease and other
9		development approvals
10		Schedule 1, section 1.15 (1) (a)
11		<i>omit</i>
12	108	Schedule 1, section 1.15 (2) and examples
13		<i>omit</i>

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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

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