

2022

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning and Land Management)

Planning Bill 2022

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2022

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning and Land Management)

Planning Bill 2022

A Bill for

An Act about planning and development in the ACT, and for other purposes

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

Chapter 1 Preliminary

1 Name of Act

This Act is the *Planning Act 2022*.

2 Commencement

- (1) The following provisions commence on the day after this Act's notification day:

- (a) section 38 (District strategy);
- (b) part 20.3 (Transitional—territory plan).

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

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

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

- (3) If a provision of this Act has not commenced within 18 months beginning on this Act's notification day, it automatically commences on the first day after that period.

- (4) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Dictionary

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

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*declared site*—see the [Tree Protection Act 2005](#), dictionary’ means that the term ‘declared site’ is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

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

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

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

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

1 **6 Application of Act**

2 This Act applies only to territory land.

3 *Note* Under the *Australian Capital Territory (Planning and Land*
4 *Management) Act 1988* (Cwlth), an area of land in the ACT is territory
5 land unless it is declared to be national land. An area may be declared to
6 be national land if it is, or is intended to be, used by or on behalf of the
7 Commonwealth.

**Chapter 2 Object, principles and
important concepts**

Part 2.1 Object and key elements

7 Object of Act

- (1) The object of this Act is to support and enhance the Territory's liveability and prosperity, and promote the well-being of residents by creating an effective, efficient, accessible and enabling planning system that—
- (a) is outcomes-focussed; and
 - (b) promotes and facilitates the achievement of ecologically sustainable development that is consistent with planning strategies and policies; and
 - (c) provides a scheme for community participation.
- (2) As part of achieving the object mentioned in subsection (1), the planning system is intended to—
- (a) be based on policies, processes and practices that are easy to understand; and
 - (b) promote certainty of processes and consistent and transparent application of policies while at the same time providing scope for innovation in development proposals; and
 - (c) provide a clearly defined hierarchy of planning strategies that inform the content of the territory plan; and
 - (d) engage with other laws to support the efficient, appropriate and effective delivery of other related government policy objectives; and

Section 8

- 1 (e) promote high standards for the built environment through an
2 emphasis on design quality and universal design for the benefit
3 of people with differing needs and capabilities; and
- 4 (f) provide for community participation in relation to the
5 development of planning strategies and policies, and
6 development assessment.
- 7 (3) The following matters must be considered in achieving the object of
8 this Act:
- 9 (a) the ACT's biodiversity and landscape setting, including the
10 integration of natural, built, cultural and heritage elements;
- 11 (b) high-quality, people-focussed and design-led built outcomes
12 that respond and contribute to the distinctive characteristics of
13 the local area, and sense of place;
- 14 (c) the knowledge, culture and tradition of the traditional custodians
15 of the land;
- 16 (d) planning for population growth and development of the ACT
17 while protecting those aspects that make the ACT an attractive
18 place in which to live;
- 19 (e) a sustainable and resilient environment that is planned, designed
20 and developed for a net-zero greenhouse gas future using
21 integrated mitigation and adaptation best practices and considers
22 food and water security.

23 **8 Key elements of Act**

- 24 (1) This Act provides a planning regime for the ACT consistent with the
25 responsibilities of the Territory under the *Australian Capital
26 Territory (Planning and Land Management) Act 1988* (Cwlth).
- 27 (2) The key elements of this Act are as follows:
- 28 (a) the *planning strategy*—setting out the long-term strategic
29 direction and desired future planning outcomes for the Territory;

- 1 (b) *district strategies*—setting out the strategic direction and
2 desired future planning outcomes for districts;
- 3 (c) the *territory plan*—setting out the desired planning outcomes,
4 land use zones and development assessment provisions;
- 5 (d) the *leasing system*—setting out the tenure and use arrangements
6 for land in the ACT;
- 7 (e) the *development assessment and approval system*—setting out
8 the processes for assessing and deciding development
9 applications and promoting desired planning outcomes for the
10 Territory by—
- 11 (i) categorising development; and
- 12 (ii) providing the application and assessment requirements for
13 different categories of development; and
- 14 (iii) providing a process for making, receiving, assessing and
15 deciding development applications; and
- 16 (iv) establishing rights and responsibilities in relation to
17 development approvals;
- 18 (f) *Ministerial powers*—to identify priority development proposals
19 for progressing through the development approval system;
- 20 (g) the *compliance and enforcement framework*—which sets out a
21 variety of offences and enforcement arrangements;
- 22 (h) *review processes*—for internally and externally reviewing
23 administrative decisions;
- 24 (i) *access to information provisions*—which outline what
25 information is available to the public and how it is accessible.
- 26 (3) Subsection (2) is intended only as a guide to readers.

- 1 **9 Meaning of *ecologically sustainable development***
- 2 (1) In this Act:
- 3 *ecologically sustainable development* means development involving
- 4 the effective integration of the following principles:
- 5 (a) the protection of ecological processes and natural systems at
- 6 local, territory and broader landscape levels;
- 7 (b) the achievement of economic growth and prosperity;
- 8 (c) the maintenance and enhancement of cultural, physical and
- 9 social wellbeing of people and communities;
- 10 (d) the precautionary principle;
- 11 (e) the inter-generational equity principle.
- 12 (2) In this section:
- 13 *achievement of economic growth and prosperity* includes achieving
- 14 a diverse, efficient, resilient and strong territory economy that allows
- 15 communities to meet their needs without compromising the ability of
- 16 future generations to meet their needs.
- 17 *maintenance and enhancement of cultural, physical and social*
- 18 *wellbeing of people and communities* includes—
- 19 (a) creating and maintaining well-serviced, healthy, prosperous,
- 20 liveable and resilient communities with affordable, efficient,
- 21 safe and sustainable development; and
- 22 (b) conserving or enhancing places of special aesthetic,
- 23 architectural, cultural, heritage, historic, scientific, social or
- 24 spiritual significance; and
- 25 (c) providing for integrated networks of pleasant and safe public
- 26 areas for aesthetic enjoyment and cultural, recreational or social
- 27 interaction; and

- 1 (d) accounting for the potential adverse impacts of development on
2 climate change, and seeking to address the impacts through
3 sustainable development and design.
- 4 ***protection of ecological processes and natural systems*** includes—
- 5 (a) conserving, enhancing or restoring the life-supporting capacities
6 of air, ecosystems, soil and water for present and future
7 generations; and
- 8 (b) conserving biological diversity and ecological integrity; and
- 9 (c) appropriately valuing and pricing environmental resources.
- 10 ***the inter-generational equity principle*** means that the present
11 generation should ensure that the health, diversity and productivity of
12 the environment is maintained or enhanced for the benefit of future
13 generations.
- 14 ***the precautionary principle*** means that, if there is a threat of serious
15 or irreversible environmental damage, a lack of full scientific
16 certainty should not be used as a reason for postponing measures to
17 prevent environmental degradation.

Part 2.2 Planning principles

10 Principles of good planning

(1) To achieve good planning outcomes, a person must consider the object of this Act and the following principles of good planning in developing planning strategies, plans and policies:

- (a) activation and liveability principles;
- (b) cultural heritage conservation principles;
- (c) high-quality design principles;
- (d) integrated delivery principles;
- (e) investment facilitation principles;
- (f) long-term focus principles;
- (g) natural environment conservation principles;
- (h) sustainability and resilience principles;
- (i) urban regeneration principles.

(2) In this Act:

activation and liveability principles means the following:

- (a) planning and design should support diverse economic and social activities, including through promoting different but compatible uses for buildings and other areas;
- (b) urban areas should include a range of high-quality housing options with an emphasis on living affordability;
- (c) urban areas should be designed to promote active travel and convenient and efficient use of public transport;
- (d) districts should be planned, designed and developed to support active and healthy lifestyles and to cater for a diverse range of cultural and social activities;

- 1 (e) policies should support and enhance the quality of life and
2 wellbeing of residents.
- 3 ***cultural heritage conservation principles*** means the following:
- 4 (a) planning and design should promote the unique cultural heritage
5 of the ACT by acknowledging established heritage significance
6 in design and placemaking;
- 7 (b) development should—
- 8 (i) respect local heritage; and
- 9 (ii) avoid direct impacts on heritage or, if a direct impact is
10 unavoidable, ensure that the impact is justifiable and
11 proportionate.
- 12 ***high-quality design principles*** means the following:
- 13 (a) development should be focussed on people and designed to—
- 14 (i) reflect local setting and context; and
- 15 (ii) have a distinctive identity that responds to the existing
16 character of its locality; and
- 17 (iii) effectively integrate built form, infrastructure and public
18 spaces;
- 19 (b) public spaces should be designed to be used, appropriately
20 landscaped and vegetated, and should be designed to contribute
21 to the urban forest;
- 22 (c) built form and public spaces should be designed to be inclusive
23 and accessible to people with differing needs and capabilities,
24 including through the serious consideration of universal design
25 practices;
- 26 (d) developments should be planned and designed to be
27 well-connected and integrated with surrounding development in
28 ways that facilitate the safe, secure and effective movement of
29 people within and through them.
-

- 1 ***integrated delivery principles*** means the following:
- 2 (a) policies relating to planning, including those arising outside the
- 3 planning system, should be coordinated to efficiently and
- 4 effectively achieve planning outcomes;
- 5 (b) planning, design and development should promote integrated
- 6 transport connections and equitable access to services and
- 7 amenities;
- 8 (c) infrastructure, public spaces and facilities should be planned to
- 9 meet future needs and designed to be integrated with related
- 10 development;
- 11 (d) built form should be durable, designed to be adaptive (including
- 12 in relation to the reuse of buildings or parts of buildings) and
- 13 compatible with surrounding public spaces.
- 14 ***investment facilitation principles*** means the following:
- 15 (a) planning and design should be undertaken with a view to
- 16 strengthening the economic prosperity of the Territory and
- 17 contributing to diversification of the economy, economic
- 18 security and growth;
- 19 (b) planning outcomes should be achieved by facilitating
- 20 coordinated approaches that promote public and private
- 21 investment towards common goals.
- 22 ***long-term focus principles*** means the following:
- 23 (a) policy frameworks should be based around long-term priorities,
- 24 be ecologically sound, and seek to promote equity between
- 25 present and future generations;
- 26 (b) policy frameworks should be able to respond to emerging
- 27 challenges and cumulative impacts identified by monitoring,
- 28 benchmarking and evaluation programs.

- 1 ***natural environment conservation principles*** means the following:
- 2 (a) planning and design should promote healthy and resilient
- 3 ecosystems, by avoiding or minimising loss of habitat and other
- 4 key threatening processes for biodiversity;
- 5 (b) policies, planning and design should integrate and promote—
- 6 (i) nature-based solutions to climate change and water
- 7 security; and
- 8 (ii) the valuation and maintenance of the ecosystem services
- 9 and amenity provided by a healthy natural environment;
- 10 (c) biodiversity connectivity and habitat values should be integrated
- 11 across urban areas, including through appropriate planning for,
- 12 and landscaping of, urban open space and travel corridors.
- 13 ***sustainability and resilience principles*** means the following:
- 14 (a) places should be planned, designed and developed to be
- 15 sustainable and resilient;
- 16 (b) effort should be focussed on adapting to the effects of climate
- 17 change, including through mitigating the effects of urban heat,
- 18 managing water supplies and achieving energy efficient urban
- 19 environments;
- 20 (c) policies and practices should promote the use, reuse and renewal
- 21 of sustainable resources, and minimise use of resources.
- 22 ***urban regeneration principles*** means the following:
- 23 (a) growth should be mostly within the existing urban footprint, or
- 24 in areas close to the existing urban footprint, while maintaining
- 25 environmental values;
- 26 (b) urban regeneration should seek to make the best use (as
- 27 appropriate) of underlying or latent potential associated with
- 28 land, buildings and infrastructure.

- 1 **11 Principles of good consultation**
- 2 (1) In undertaking consultation under this Act, a person must consider
- 3 that consultation should be accessible, balanced, inclusive,
- 4 meaningful, resourced, respectful, timely, transparent and
- 5 understandable (*principles of good consultation*).
- 6 (2) In this section—
- 7 (a) consultation is *accessible* if information provided as part of the
- 8 consultation, and processes for consultation, are easy to access
- 9 and are presented in a variety of ways to accommodate different
- 10 stakeholders; and
- 11 (b) consultation is *balanced* if—
- 12 (i) it is undertaken in a way that facilitates and encourages
- 13 constructive responses from a wide range of stakeholders;
- 14 and
- 15 (ii) community views are considered together with the views
- 16 of other stakeholders; and
- 17 (c) consultation is *inclusive* if it is undertaken in a way that aims to
- 18 engage all stakeholders affected by the subject of the
- 19 consultation; and
- 20 (d) consultation is *meaningful* if—
- 21 (i) information provided as part of the consultation is adequate
- 22 to ensure all stakeholders understand the subject of, and
- 23 issues relating to, the consultation and can give informed
- 24 responses; and
- 25 (ii) it genuinely seeks community feedback; and
- 26 (iii) community views are genuinely considered and
- 27 incorporated into final decisions; and
- 28 (e) consultation is *resourced* if the processes are appropriately
- 29 supported, taking into account the significance, complexity and
- 30 likely impact of the subject of the consultation; and

- 1 (f) consultation is *respectful* if it is collaborative, genuine and
2 courteous towards all views expressed; and
- 3 (g) consultation is *timely* if—
- 4 (i) it is undertaken at an appropriate time in the planning
5 process; and
- 6 (ii) it is undertaken in a way that considers the needs of
7 stakeholders and facilitates participation; and
- 8 **Example**
9 consultation is undertaken in a way that considers holiday periods or
10 other ACT Government consultations
- 11 (iii) it allows sufficient time for stakeholders to engage with
12 other members of their group or organisation to form a
13 collective decision; and
- 14 (h) consultation is *transparent* if—
- 15 (i) information provided as part of the consultation and
16 processes for consultation are clear and observable; and
- 17 (ii) planning decisions are made openly; and
- 18 (iii) government and proponents provide reasons for decisions,
19 including how community views have been taken into
20 account; and
- 21 (i) information provided as part of consultation is *understandable*
22 if—
- 23 (i) it is clear about the overall objective of the consultation,
24 the specific issues on which stakeholders are being
25 consulted and what is not open to consultation or change;
26 and
- 27 (ii) it is accurate, written in plain language and presented
28 clearly.

- 1 **12 Good consultation guidelines**
- 2 (1) The Minister must make guidelines about principles of good
- 3 consultation and how the principles are to be implemented.
- 4 (2) A person required to undertake consultation under this Act must take
- 5 the guidelines into consideration when undertaking the consultation.
- 6 (3) A guideline is a notifiable instrument.
- 7 (4) The Minister must, at least once every 5 years, decide whether the
- 8 guidelines about principles of good consultation should be reviewed,
- 9 taking into account whether the principles continue to reflect best
- 10 practice.
- 11 (5) The territory planning authority must publish on the authority website
- 12 notice of the decision under subsection (4).
- 13 **13 Consultation in accordance with Act taken to meet**
- 14 **principles of good consultation**
- 15 Consultation for an amendment of the territory plan or a development
- 16 application is taken to meet the principles of good consultation if it is
- 17 undertaken in accordance with the consultation requirements that
- 18 apply to the amendment or application under this Act.

Part 2.3 Important concepts

14 Meaning of *development* and *exempt development*

(1) In this Act:

development, in relation to land, means the following:

- (a) building, altering or demolishing a building or other structure on the land;
- (b) undertaking earthworks or other construction work on or under the land;
- (c) undertaking work that would affect the landscape of the land;
- (d) using the land, or a building or other structure on the land;
- (e) subdividing or consolidating the land;
- (f) varying a lease relating to the land (other than a variation that reduces the rent payable to a nominal rent);
- (g) putting up, attaching or displaying a sign or advertising material other than in accordance with—
 - (i) a licence issued under this Act; or
 - (ii) a sign approval under the *Public Unleased Land Act 2013*, section 25 (Approval to place sign on public unleased land); or
 - (iii) a public unleased land permit under the *Public Unleased Land Act 2013*, part 3.

exempt development—see section 143.

(2) In this section:

consolidation—see section 252 (Definitions—ch 10).

subdivision—

(a) includes the following:

(i) the surrender of 1 or more leases held by the same lessee, and the grant of new leases to the lessee to subdivide the parcels of land in the surrendered leases;

(ii) the subdivision of land under the *Unit Titles Act 2001*;

(iii) the subdivision of land in future urban areas; but

(b) does not include a sublease.

15 Meaning of *use*

In this Act:

use, of land, or of a building or other structure on land, means any of the following:

(a) begin a new use of the land, building or other structure;

(b) continue a use of the land, building or other structure;

Note Development approval is not required for continuing use lawfully commenced (see s 401 and s 404).

(c) change a use of the land, building or other structure, whether by adding a use, stopping a use and substituting another use or otherwise.

1 **Chapter 3** **Territory planning authority**
2 **and chief planner**

3 **Part 3.1** **Territory planning authority**

4 **16** **Establishment of authority**

- 5 (1) The Territory Planning Authority is established.
6 (2) The territory planning authority is a corporation.
7 (3) The chief planner is the territory planning authority.

8 **17** **Authority represents the Territory**

- 9 (1) Anything done in the name of, or for, the territory planning authority
10 or the chief planner in exercising a function of the authority is taken
11 to have been done for, and binds, the Territory.
12 (2) The territory planning authority has the same status, privileges and
13 immunities as the Territory so far as it represents the Territory.

Part 3.2 Functions of territory planning authority

18 Authority functions

- (1) The territory planning authority has the following functions:
- (a) to prepare and administer the territory plan;
 - (b) to continually review the territory plan, propose amendments and consider amendments initiated by proponents and the Minister, as necessary;
 - (c) to plan and regulate the development of land;
 - (d) to advise on planning and land policy, including the broad spatial planning framework for the ACT and the achievement of desired future planning outcomes;
 - (e) to promote and implement the planning strategy and district strategies;
 - (f) to promote high-quality design and good planning outcomes;
 - (g) to maintain the digital cadastral database under the *Districts Act 2002*;
 - (h) to make available land information;
 - (i) to grant, administer, vary and end leases on behalf of the Executive;
 - (j) to grant licences over unleased land;
 - (k) to decide applications for approval to undertake development;
 - (l) to make controlled activity orders under part 12.3 (Controlled activity orders) and take other compliance and enforcement action under this Act and other territory laws;
 - (m) to provide planning services, including services to entities outside the ACT;

- 1 (n) to review its own decisions and participate in external review
2 processes;
- 3 (o) to provide opportunities for participation in planning and
4 decision-making processes;
- 5 (p) to promote public education about, and understanding of, the
6 planning system, including by providing easily accessible public
7 information and documentation on planning and land use.
- 8 (2) The territory planning authority may exercise any other function
9 given to the authority under this Act, another territory law or a
10 Commonwealth law.
- 11 *Note* A provision of a law that gives an entity (including a person) a function
12 also gives the entity powers necessary and convenient to exercise the
13 function (see [Legislation Act](#), s 196).
- 14 (3) The territory planning authority must exercise its functions, if
15 relevant—
- 16 (a) in accordance with the object of this Act; and
- 17 (b) taking into account the principles of good planning in
18 section 10; and
- 19 (c) taking into consideration the statement of planning priorities
20 made by the Minister.

21 **19 Authority to comply with directions**

22 The territory planning authority must comply with any directions
23 given to the authority under this Act or another territory law.

Part 3.3 Operations of territory planning authority

20 Ministerial directions to authority

(1) The Minister may give a written direction to the territory planning authority—

- (a) about the general policies the authority must follow; or
- (b) requiring the authority to prepare an amendment of the territory plan or review the plan.

Note If s 62 or s 67 applies to a draft major plan amendment, the Minister may not do anything under par (b) that would be inconsistent with the territory plan if it were amended in accordance with the major plan amendment.

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

- (a) tell the territory planning authority about the proposed direction; and
- (b) give the authority a reasonable opportunity to comment on the proposed direction; and
- (c) consider any comment made by the authority.

(3) A direction is a notifiable instrument.

(4) A direction must be published on the authority website.

21 Assembly may recommend directions to authority

(1) The Legislative Assembly may, by resolution, recommend that the Minister give the territory planning authority a stated direction under section 20.

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

- (a) direct the territory planning authority under section 20; or

1 (b) tell the Legislative Assembly that the Minister does not propose
2 to direct the authority as recommended and give reasons for the
3 decision.

4 (3) A direction mentioned in subsection (2) (a) may be in accordance
5 with the Legislative Assembly's resolution or as amended by the
6 Minister.

7 **22 Provision of planning services to others—Ministerial**
8 **approval**

9 The territory planning authority may provide planning services to
10 somebody other than the Territory only with the Minister's written
11 approval.

12 **23 Reports by authority to Minister**

13 (1) The territory planning authority must give the Minister a report, or
14 information about its operations, required by the Minister.

15 (2) The report must be prepared in the form (if any) that the Minister
16 requires.

17 (3) This section is in addition to any other provision about the giving of
18 reports or information by the territory planning authority.

19 **24 Authority's role in cohesive urban renewal and suburban**
20 **land development**

21 The territory planning authority must work with the city renewal
22 authority and suburban land agency to encourage cohesive planning
23 and development of land.

- 1 **25 Delegation by authority**
- 2 (1) The territory planning authority may delegate—
- 3 (a) the authority’s functions under this Act or another territory law
- 4 to a public servant or a member of the authority’s staff; and
- 5 (b) the authority’s functions under part 10.13 (Licences for unleased
- 6 land) in relation to an area of land to the custodian of the land.
- 7 (2) The territory planning authority may also delegate the function of
- 8 granting leases on behalf of the Executive to the following:
- 9 (a) the city renewal authority;
- 10 (b) the suburban land agency.
- 11 *Note* For laws about delegations, see the [Legislation Act](#), pt 19.4.

Part 3.4 Chief planner

26 Appointment of chief planner

- (1) The Executive must appoint a person as the Chief Planner.
- (2) The Executive must not appoint a person as the chief planner unless satisfied that the person—
 - (a) has the management and planning experience and expertise to exercise the functions of the chief planner; and
 - (b) either—
 - (i) has qualifications that are appropriate to exercise the functions of the chief planner; or
 - (ii) is eligible to be registered with a representative body.
- (3) An appointment must be for a term of not longer than 5 years.
- (4) An appointment is a notifiable instrument.
- Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.
- (5) In this section:

representative body means an entity that has as a main purpose the promotion of the interests of professionals with qualifications that are appropriate to exercise the functions of the chief planner.

27 Chief planner's conditions of appointment

The chief planner's conditions of appointment are the conditions agreed between the Executive and the chief planner, subject to any determination under the [Remuneration Tribunal Act 1995](#).

- 1 **28** **Chief planner must avoid conflict of interest**
- 2 If the chief planner has a financial or other personal interest that
- 3 conflicts or may conflict, or may be perceived to conflict, with the
- 4 functions of the chief planner or the territory planning authority, the
- 5 chief planner must disclose, in writing, the nature of the interest and
- 6 the conflict or potential conflict to the Executive.
- 7 **29** **Chief planner must not do inconsistent work etc**
- 8 The chief planner must not engage in—
- 9 (a) any other paid activity without the Minister’s written approval;
- 10 or
- 11 (b) any unpaid activity that is inconsistent with the functions of the
- 12 chief planner or the territory planning authority.
- 13 **30** **Functions of chief planner**
- 14 The chief planner may exercise the functions given to the chief
- 15 planner under this Act or another territory law.
- 16 **31** **Suspending chief planner’s appointment**
- 17 (1) The Executive may suspend the chief planner—
- 18 (a) for misbehaviour; or
- 19 (b) for physical or mental incapacity, if the incapacity affects the
- 20 exercise of the chief planner’s functions; or
- 21 (c) for failing, without reasonable excuse, to comply with
- 22 section 28 (Chief planner must avoid conflict of interest); or
- 23 (d) for failing, without reasonable excuse, to comply with
- 24 section 29 (Chief planner must not do inconsistent work etc); or
- 25 (e) if the chief planner is absent, without approval or reasonable
- 26 excuse, for 14 consecutive days or for 28 days in any 12-month
- 27 period; or

- 1 (f) if the chief planner is convicted, or found guilty, in Australia of
2 an offence punishable by imprisonment for at least 1 year; or
- 3 (g) if the chief planner is convicted, or found guilty, outside
4 Australia of an offence that, if it had been committed in the
5 ACT, would be punishable by imprisonment for at least 1 year.
- 6 (2) If the Executive suspends the chief planner, the Executive must give
7 the chief planner written notice of the suspension and a copy of the
8 statement of reasons for the suspension.
- 9 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
10 [Act](#), s 179.
- 11 (3) The suspension takes effect when the notice and statement are given
12 to the chief planner under subsection (2).
- 13 (4) The Executive must present to the Legislative Assembly the
14 statement of reasons for the suspension not later than the first sitting
15 day after the day the chief planner is suspended.
- 16 (5) The Legislative Assembly may, not later than 6 sitting days after the
17 day the statement is presented to the Assembly, make a resolution
18 requiring the Executive to end the chief planner's appointment.
- 19 (6) The chief planner's suspension ends—
- 20 (a) if the Executive does not comply with subsection (4)—at the end
21 of the day the Executive should have presented to the Legislative
22 Assembly the statement mentioned in that subsection; or
- 23 (b) if the Assembly does not pass a resolution mentioned in
24 subsection (5) before the end of the 6 sitting days—at the end of
25 the 6th sitting day.
- 26 (7) The chief planner is entitled to be paid salary and allowances while
27 suspended.

- 1 **32 Ending chief planner’s appointment**
- 2 The Executive must end the chief planner’s appointment if—
- 3 (a) the Legislative Assembly passes a resolution under
- 4 section 31 (5); or
- 5 (b) the chief planner becomes bankrupt or personally insolvent.

Part 3.5 Authority staff and consultants

33 Authority's staff

- (1) The chief planner may employ staff for the territory planning authority on behalf of the Territory.
- (2) The territory planning authority staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, div 8.2 applies to the chief planner in relation to the employment of staff (see that *Act*, s 152).

34 Arrangements for staff

The chief planner may arrange with the head of service to use the services of a public servant.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).

35 Authority consultants

- (1) The territory planning authority may engage consultants.
- (2) However, the territory planning authority must not enter into a contract of employment with a consultant.
- (3) The conditions of a consultant's engagement are the conditions agreed between the chief planner and the consultant.

Chapter 4 Strategic and spatial planning

Part 4.1 Strategic and spatial planning— general

36 Planning strategy

(1) The Executive must make a strategy for the ACT (the *planning strategy*) stating—

(a) the long-term planning policy and goals for the ACT, consistent with the object of this Act; and

(b) an overarching spatial vision; and

(c) strategic directions and desired future planning outcomes.

Note In making the planning strategy, the Executive must consider the principles of good planning (see s 10).

(2) The planning strategy may include other government strategies and policies if appropriate.

(3) The Executive must undertake public consultation before making the planning strategy.

Note In undertaking consultation under this Act, the Executive must consider the principles of good consultation (see s 11).

(4) The planning strategy is a notifiable instrument.

(5) The planning strategy must be published on the authority website.

37 Consideration of planning strategy

(1) The planning strategy must be considered by—

(a) the territory planning authority under the following provisions:

(i) section 56 (Proponent-initiated amendment—
consideration of application);

- 1 (ii) section 83 (3) (Making minor plan amendments);
2 (iii) section 89 (2) (a) (Review of territory plan); and
3 (b) the Minister under the following provisions:
4 (i) section 42 (1) (Statement of planning priorities);
5 (ii) section 68 (3) (a) (Certain draft major plan amendments
6 given to Minister under s 65—action by Minister);
7 (iii) section 73 (3) (c) (Minister’s powers in relation to draft
8 major plan amendments);
9 (iv) section 88 (2) (a) (v) (Consideration of whether review of
10 territory plan necessary); and
11 (c) the Executive under section 36.
12 (2) The planning strategy is not a relevant consideration for any other
13 decision under this Act by the territory planning authority, the
14 Minister or another entity under any of the following chapters:
15 (a) chapter 6 (Significant development);
16 (b) chapter 7 (Development assessment and approvals);
17 (c) chapter 8 (Territory priority projects).

18 **38 District strategy**

- 19 (1) The Executive may make a plan for a district (a *district strategy*) that
20 states the long-term planning policy and goals for the district,
21 consistent with the planning strategy.

22 *Note* In making a district strategy, the Executive must consider the principles
23 of good planning (see s 10).

- 24 (2) A district strategy may—
25 (a) include strategies, spatial policies and desired future planning
26 outcomes for the district to guide and manage change in the
27 district; and

- 1 (b) set out principles and policies for development of areas within
2 the district, including future urban areas; and
- 3 (c) identify areas within the district for future detailed planning; and
- 4 *Note* Detailed planning may be done through a planning and response
5 report.
- 6 (d) include other government strategies and policies applying to the
7 district if appropriate.
- 8 (3) The Executive must undertake public consultation before making a
9 district strategy.
- 10 *Note* In undertaking consultation under this Act, the Executive must consider
11 the principles of good consultation (see s 11).
- 12 (4) A district strategy is a notifiable instrument.
- 13 (5) A district strategy must be published on the authority website.

14 **39 Planning and response report**

- 15 (1) The territory planning authority may propose amendments to a
16 district strategy, as well as related amendments to the territory plan,
17 in a detailed report for the district or part of the district (a ***planning***
18 ***and response report***).
- 19 *Note* The process for amending the territory plan is set out in pt 5.2 for major
20 plan amendments and pt 5.3 for minor plan amendments.
- 21 (2) A planning and response report may also be prepared by a prescribed
22 entity for the territory planning authority's approval.
- 23 (3) The entity preparing a planning and response report must undertake
24 consultation on the substance of the report.
- 25 (4) A planning and response report must be consistent with the principles
26 and policies for development of the district set out in the district
27 strategy.

- 1 (5) A regulation may prescribe additional requirements for preparing a
2 planning and response report.

3 **Examples—additional requirements**

- 4 1 requirements for planning and response reports generally, including structure
5 and content requirements
6 2 requirements for planning and response reports at different spatial scales
7 3 requirements for who may prepare planning and response reports at different
8 spatial scales

9 **40 Amendment of district strategy**

10 The Minister may amend a district strategy by approving an
11 amendment proposed in a planning and response report if satisfied
12 that—

- 13 (a) there has been sufficient community consultation on the
14 proposed amendment; and
15 (b) the amendment is consistent with the principles and policies for
16 development of the district set out in the district strategy.

17 **41 Review of planning and district strategies**

- 18 (1) The Executive must, at least once every 5 years after making the
19 planning strategy or a district strategy, consider whether the strategy
20 should be reviewed.
21 (2) In deciding whether the strategy should be reviewed, the Executive
22 must consider whether the strategy continues to reflect the long-term
23 planning policy and goals for the ACT.
24 (3) After the Executive considers whether the strategy should be
25 reviewed, the Minister must prepare a notice stating—
26 (a) that the Executive has considered whether the strategy should be
27 reviewed; and
28 (b) the Executive's decision on whether the strategy should be
29 reviewed; and

- 1 (c) the date of the Executive's decision; and
- 2 (d) if the Executive decides that the strategy should be reviewed—
- 3 the scope of the review.
- 4 (4) A notice under subsection (3) is a notifiable instrument.
- 5 (5) If the Executive decides that the strategy should be reviewed, the
- 6 Executive must arrange the review.
- 7 **42 Statement of planning priorities**
- 8 (1) The Minister may give the territory planning authority a written
- 9 statement that sets out the priorities arising from the planning strategy
- 10 (the *statement of planning priorities*).
- 11 (2) The statement of planning priorities must identify the actions to be
- 12 taken in the short to medium term to achieve the planning priorities.
- 13 (3) To remove any doubt, the statement of planning priorities does not
- 14 authorise a person to whom section 50 (Effect of territory plan)
- 15 applies to do anything inconsistent with the territory plan.
- 16 **Example**
- 17 The statement of planning priorities may include policy material inconsistent with
- 18 the territory plan, but the plan would have to be amended before the policy could
- 19 be implemented.
- 20 (4) The statement of planning priorities is a notifiable instrument.
- 21 (5) The statement of planning priorities must be published on the
- 22 authority website.

Part 4.2 Subdivision design applications

43 Subdivision design applications

(1) A development application for a subdivision development proposal (a *subdivision design application*)—

(a) must include a detailed plan for the proposal that is consistent with—

(i) the principles and policies set out in the district strategy for development of the area in which the development is proposed to take place; and

(ii) the provisions of the territory plan that apply to the proposal; and

(b) must identify—

(i) the boundaries of the subdivision and individual blocks within the subdivision; and

(ii) if the subdivision is in a future urban area—the existing and proposed land use zones designated in the territory plan for the area; and

(iii) if the subdivision is not in a future urban area—the existing land use zones in the subdivision.

Note 1 A subdivision design application must also be accompanied by information and documents sufficient to address each provision of the territory plan relevant to the proposed development (see s 164 (2) (c) (i)).

Note 2 A proponent may be required to prepare a subdivision design application at the district or division scale, or at spatial scales within the district scale (ie an area within a suburb proposed for redevelopment and land use change, such as a town centre, or group centre).

- 1 (2) A subdivision design application may include the following:
- 2 (a) design and construction requirements for roads;
- 3 (b) design and construction requirements for infrastructure works
- 4 and landscaping;
- 5 (c) a requirement that stated areas be used for stated purposes;
- 6 (d) a tree management plan;
- 7 (e) design and construction requirements for reticulated services;
- 8 (f) design and construction requirements for works on proposed
- 9 public land;
- 10 (g) a provision that is proposed to apply to the ongoing development
- 11 of a block in the subdivision, if the provision is consistent with
- 12 the territory plan (including any existing mandatory provision
- 13 applying to the block);
- 14 (h) landscape design and ongoing management requirements for the
- 15 protection of connected native wildlife habitat;
- 16 (i) design and construction requirements for climate change
- 17 adaptation and mitigation measures;
- 18 (j) design and construction requirements for water-sensitive urban
- 19 design.

20 **Example—par (c)**

21 a subdivision design application may identify an area to be zoned for community

22 use and state that it must be used for a primary school

23 **Examples—par (g)**

24 1 an increased setback requirement

25 2 a reduced building envelope

- 26 (3) In this section:

27 ***mandatory provision*** means a provision stated in the territory plan as

28 being mandatory.

subdivision development proposal—

- (a) means a development proposal—
 - (i) to create or consolidate blocks; or
 - (ii) to create or remove roads; or
 - (iii) involving land use zone, design and construction requirements for future development on the land the subject of the application; but
- (b) does not include a development proposal that is limited to changing a block boundary or subdividing land under the *Unit Titles Act 2001*.

44 Effect of approval of subdivision design application

- (1) The territory planning authority must, within a reasonable time after approving a subdivision design application under section 182 (Deciding development applications), amend the territory plan under section 83 (Making minor plan amendments)—
 - (a) if the land the subject of the application is in a future urban area—to identify the land use zones that will apply to the land, consistent with the application; and
 - (b) to incorporate any provision that—
 - (i) was included in the application under section 43 (2) (g); and
 - (ii) the authority determined should be incorporated in the territory plan; and
 - (c) to incorporate any ongoing provision that—
 - (i) was not included in the application under section 43 (2) (g); and
 - (ii) the authority determined should be incorporated in the territory plan.

- 1 (2) If the territory plan is amended under subsection (1) and the land the
2 subject of the subdivision design application is in a future urban area,
3 the land ceases to be in a future urban area.

Chapter 5 Territory plan

Part 5.1 Establishment, object, key components and effect

45 Territory plan

- (1) There must be a territory plan that applies to the ACT.

Note The territory plan can be amended (see pt 5.2 and pt 5.3).

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

46 Object of territory plan

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

47 Territory plan to give effect to strategic planning outcomes

The territory plan—

- (a) must promote principles of good planning; and
- (b) must give effect to the planning strategy and district strategies; and
- (c) may give effect to relevant outcomes related to planning contained in other government strategies and policies.

48 Contents of territory plan

- (1) The territory plan must—

- (a) include a map that identifies districts and designates land use zones (the *territory plan map*); and

- 1 (b) set out the planning principles and policies for giving effect to
2 the object of the plan, including—
3 (i) the policy outcomes to be achieved by the plan; and
4 (ii) requirements and outcomes against which development
5 proposals are assessed; and
6 (iii) provisions that support compliance with requirements for
7 undertaking development.
- 8 (2) The territory plan may include anything else relevant to the object of
9 the territory plan.
- 10 (3) The territory plan may apply, adopt or incorporate—
11 (a) a law of another jurisdiction; or
12 (b) an instrument as in force from time to time, unless the territory
13 plan provides otherwise.
- 14 (4) The [Legislation Act](#), section 47 (6) does not apply to an instrument
15 applied, adopted or incorporated under subsection (3).

16 **49 Format of territory plan and supporting material**

- 17 (1) In preparing the territory plan, the territory planning authority must
18 endeavour to make the territory plan, and any amendments of the
19 plan, easy for users of the plan to read and understand.
- 20 (2) The territory plan may be supported by background material, guides,
21 advisory notes or anything else (the *supporting material*) that the
22 territory planning authority considers will help readers to understand
23 and apply the territory plan.
- 24 (3) The supporting material must be published on the authority website.

1 **50 Effect of territory plan**

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

5 *Note* The territory plan has no effect to the extent that it is inconsistent with
6 the national capital plan (see [Australian Capital Territory \(Planning and](#)
7 [Land Management\) Act 1988](#) (Cwlth), s 26).

Part 5.2 Territory plan—major plan amendments

Division 5.2.1 Preliminary

51 Outline of major plan amendment process

- (1) A major plan amendment starts when the territory planning authority prepares a draft major plan amendment—
 - (a) on application by an interested person (see s 55 (1)); or
 - (b) on the authority's own initiative (see s 58); or
 - (c) in accordance with a direction by the Minister under section 20 (see s 58 (2)).
- (2) After preparing a draft major plan amendment, the territory planning authority must prepare a consultation notice (see s 61) that invites comments on the draft amendment and, when published on the authority website, may give the draft amendment interim effect (see s 62).
- (3) The territory planning authority—
 - (a) may revise or withdraw a draft major plan amendment after the end of consultation (see s 64); and
 - (b) unless the draft major plan amendment is withdrawn, must give the draft amendment to the Minister for approval (see s 65).
- (4) If the territory planning authority gives a draft major plan amendment to the Minister for approval, the territory planning authority must prepare a public availability notice (see s 66) that states that the draft amendment is available for public inspection and, when published on the authority website, may give the draft amendment interim effect (see s 67).

- 1 (5) After receiving a draft major plan amendment, the Minister may do
2 any of the following (see s 68):
- 3 (a) refer the draft amendment to the relevant Assembly committee
4 for a report on the draft amendment;
- 5 (b) withdraw the draft amendment;
- 6 (c) give the draft amendment to the territory planning authority for
7 further consultation or revision.
- 8 (6) After approving a draft major plan amendment, the Minister must
9 present the amendment to the Legislative Assembly (see s 75) and the
10 Assembly may completely or partly reject the amendment (see s 76).
- 11 (7) A major plan amendment commences on the day fixed by the
12 Minister (see s 78 and s 79 (5) (a)).
- 13 (8) This section is intended only as a guide to readers.

14 **52 Application—pt 5.2**

- 15 (1) This part does not apply to amendments of the territory plan that are
16 minor plan amendments under part 5.3.
- 17 (2) In this section:
- 18 *minor plan amendment*—see section 82.

19 **53 Definitions—pt 5.2**

20 In this part:

21 *background papers*, in relation to a draft major plan amendment or
22 major plan amendment—each of the following is a *background*
23 *paper* in relation to the proposed amendment:

- 24 (a) a copy of each of the following documents:
- 25 (i) any relevant direction of the Minister under section 20;

- 1 (ii) any comment received during consultation under
- 2 section 61 (1) (c) (Public consultation—notification and
- 3 availability of draft major plan amendments etc);
- 4 (iii) any relevant supporting report for the proposed
- 5 amendment;
- 6 (b) a statement, by the territory planning authority, of the reasons
- 7 for any inconsistency between the draft plan and any of the
- 8 following:
- 9 (i) a direction mentioned in paragraph (a) (i);
- 10 (ii) a recommendation in a supporting report for the proposed
- 11 amendment;
- 12 (c) any other document—
- 13 (i) considered by the authority to be necessary or useful in
- 14 explaining the proposed amendment; or
- 15 (ii) designated by the authority, in writing, as a background
- 16 paper.
- 17 **consultation comments**, in relation to a draft major plan
- 18 amendment—see section 61 (1) (c) (i).
- 19 **consultation notice**, for a draft major plan amendment—see
- 20 section 61 (1) (c).
- 21 **consultation period** means a stated period of at least 30 working days.
- 22 **corresponding major plan amendment**, for a draft major plan
- 23 amendment, means the major plan amendment developed from the
- 24 draft major plan amendment.
- 25 **draft major plan amendment**—
- 26 (a) in relation to an application for a proponent-initiated
- 27 amendment—see section 57 (2); and

(b) in relation to an amendment prepared by the territory planning authority on its own initiative or in response to a direction by the Minister under section 20—see section 58 (1).

interested person, in relation to land—see section 54.

major plan amendment means a draft major plan amendment approved by the Minister under section 73 (2) (a) (Minister's powers in relation to draft major plan amendments).

proponent-initiated amendment—see section 55.

public availability notice, for a draft major plan amendment—see section 66 (a).

supporting report, for a proponent-initiated amendment, draft major plan amendment or major plan amendment, means a detailed report setting out all of the following:

- (a) the need for the proposed amendment;
- (b) the positive and negative impacts of the proposed amendment;
- (c) a statement about how the proposed amendment would give effect to the planning strategy and any relevant district strategy;
- (d) a statement about how the proposed amendment would be consistent or inconsistent with relevant planning outcomes contained in other government strategies and policies;
- (e) any consultation undertaken by the interested person who proposed the amendment, including with relevant entities who may have an interest in the proposed amendment.

54 Meaning of *interested person*—pt 5.2

For this part, a person is an ***interested person*** in relation to land if—

- (a) the person is the lessee or custodian of the land; or
- (b) the person is acting with the consent of the lessee or custodian of the land.

Division 5.2.2 Initiation of major plan amendments

55 Proponent-initiated amendment—application

- (1) An interested person in relation to land may apply to the territory planning authority for an amendment of the territory plan (a *proponent-initiated amendment*) in relation to that land.
- (2) The application must—
- (a) include—
 - (i) the applicant's name and address; and
 - (ii) if the applicant is not the lessee or custodian of the land—the name of the lessee or custodian; and
 - (b) identify the land that is the subject of the proposed amendment; and
 - (c) include a description of the change to the territory plan the applicant is seeking from the amendment; and
 - (d) include a supporting report for the proposed amendment.
- (3) The applicant may withdraw the application any time before it is accepted by the territory planning authority.

56 Proponent-initiated amendment—consideration of application

- (1) The territory planning authority must, within 3 months after the day an interested person makes an application for a proponent-initiated amendment under section 55—
- (a) accept the application; or
 - (b) refuse to accept the application.

Note By accepting the application, the authority is not taken to support the application and is not bound to proceed with the amendment (see s 57 (3)).

- 1 (2) In considering whether to accept the application, the territory
2 planning authority must have regard to each of the following:
- 3 (a) the planning strategy;
- 4 (b) any relevant district strategy;
- 5 (c) any current or proposed amendments of, or of policies in, the
6 territory plan;
- 7 (d) the statement of planning priorities;
- 8 (e) anything else the authority considers relevant to the amendment.
- 9 (3) The authority may, by written notice, require the applicant to give
10 additional information in relation to the application.
- 11 (4) The notice must state the time, at least 20 working days, within which
12 the applicant must give the territory planning authority the additional
13 information.
- 14 (5) The territory planning authority may refuse to accept the application
15 if the additional information is not given to the authority within the
16 stated time.

17 **57 Proponent initiated amendment—acceptance of**
18 **application**

- 19 (1) If the territory planning authority accepts an application for a
20 proponent-initiated amendment under section 55, it must publish the
21 following on the authority website when the draft amendment is
22 published under section 61 (1) (Public consultation—notification and
23 availability of draft major plan amendments etc):
- 24 (a) the decision to accept the application;
- 25 (b) the application;
- 26 (c) any additional information, and the request for that information,
27 mentioned in section 56 (3).

- 1 (2) After accepting the application, the territory planning authority must
2 prepare a document to amend the territory plan (a *draft major plan*
3 *amendment*).
- 4 (3) However, the territory planning authority—
- 5 (a) is not taken to support the application by preparing the draft
6 major plan amendment; and
- 7 (b) must continue to assess the merits of the application; and
- 8 (c) is not bound to proceed with the amendment.

9 **58 Authority or Minister-initiated amendments**

- 10 (1) The territory planning authority may, on the authority's own
11 initiative, prepare a document to amend the territory plan (a *draft*
12 *major plan amendment*).
- 13 (2) The territory planning authority must prepare a draft major plan
14 amendment if the Minister gives the authority a direction under
15 section 20 (1) (b) (Ministerial directions to authority).

16 **59 Supporting report for draft major plan amendment**

- 17 (1) If the territory planning authority prepares a draft major planning
18 amendment (other than a draft amendment mentioned in
19 subsection (2)), the authority must prepare a supporting report for the
20 draft amendment.
- 21 (2) If the territory planning authority prepares a draft major planning
22 amendment after accepting an application for a proponent-initiated
23 amendment, the authority must consider the supporting report
24 included with the application for the amendment.

Division 5.2.3 Consultation

60 Draft major plan amendments—consultation

The territory planning authority must consult with each of the following in relation to a draft major plan amendment:

- (a) the national capital authority;
- (b) the conservator of flora and fauna;
- (c) the environment protection authority;
- (d) the heritage council;
- (e) each referral entity;
- (f) if the draft amendment would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected.

61 Public consultation—notification and availability of draft major plan amendments etc

- (1) After preparing a draft major plan amendment, the territory planning authority must publish the following on the authority website:
- (a) the draft amendment;
 - (b) the supporting report for the draft amendment;
 - (c) a notice that complies with section 62 (a *consultation notice*)—
 - (i) inviting people to give written comments (*consultation comments*) about the draft amendment to the authority during the consultation period for the draft amendment; and
 - (ii) stating the effect of section 63 (Public inspection of comments on draft major plan amendments).

- 1 (2) However, the territory planning authority is not required to publish a
2 major draft amendment if satisfied that publication of the draft
3 amendment—
 - 4 (a) would disclose a trade secret; or
 - 5 (b) would, or could reasonably be expected to—
 - 6 (i) endanger the life or physical safety of anyone; or
 - 7 (ii) lead to damage to, or theft of, property.
- 8 (3) The territory planning authority may extend the consultation period
9 for the draft major plan amendment.
- 10 (4) If the territory planning authority extends the consultation period for
11 the draft major plan amendment, it must—
 - 12 (a) publish a notice (an *extension notice*) on the authority website
13 about the extended consultation period; and
 - 14 (b) for a draft amendment prescribed by regulation—give a copy of
15 the extension notice to each person prescribed by regulation.
- 16 (5) A draft major plan amendment is not invalid only because the
17 territory planning authority has not complied with subsection (4) (b).
- 18 (6) This section does not apply in relation to a draft major plan
19 amendment—
 - 20 (a) if, in preparing a planning and response report, an entity has
21 undertaken consultation similar to that required under this
22 section in relation to the substance of the draft amendment; or
 - 23 (b) that has been revised by the territory planning authority in
24 accordance with a request under section 73 (2) (c) (ii)
25 (Minister’s powers in relation to draft major plan amendments);
26 or

(c) if, in developing a government policy or strategy, a government entity has undertaken consultation similar to that required under this section in relation to the substance of the draft amendment; or

(d) if the Minister consulted on the draft amendment under section 215 (4) (Declaration of territory priority projects) in relation to a proposed territory priority project declaration.

Examples—par (c)

- 1 the amendment was included as part of a consultation process undertaken by another government entity as a consequence of consulting on a new climate change strategy
- 2 the amendment was included in a draft review report prepared by the territory planning authority under s 89 and consulted on in accordance with that section

62 Public consultation—notice of interim effect etc

(1) A consultation notice must state whether or not subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment.

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

Note The Territory, the Executive, a Minister or a territory authority must also not do anything that is inconsistent with the territory plan (see s 50).

(3) A consultation notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment, must also state—

(a) the effect of subsection (2); and

(b) a period (not longer than 12 months) that is the maximum period during which the draft amendment, or part of the draft amendment, is to have interim effect.

- 1 (4) A consultation notice that states that subsection (2) applies in relation
2 to the draft major plan amendment, or part of the draft amendment, is
3 a notifiable instrument.
- 4 (5) In this section:
- 5 *defined period*, for a draft major plan amendment, means the
6 period—
- 7 (a) starting on the day the consultation notice for the draft
8 amendment is notified (the *notification day*) as required under
9 subsection (4); and
- 10 (b) ending on the day the earliest of the following happens:
- 11 (i) the day the public availability notice for the draft
12 amendment is published on the authority website as
13 required under section 66;
- 14 (ii) if the draft amendment, or the corresponding major plan
15 amendment, is withdrawn under section 64 (1) (b)
16 (Revision and withdrawal of draft major plan amendments)
17 or section 73 (2) (b) (Minister's powers in relation to draft
18 major plan amendments)—the day it is withdrawn;
- 19 (iii) the day that is 12 months after the notification day.

20 **63 Public inspection of comments on draft major plan**
21 **amendments**

- 22 (1) This section applies to written comments about a draft major plan
23 amendment—
- 24 (a) given to the territory planning authority in response to the
25 invitation in the consultation notice for the draft amendment
26 under section 61 (1) (c) (i) or otherwise; or
- 27 (b) received from the national capital authority.

- 1 (2) The territory planning authority must publish the comments on the
2 authority website for at least 30 working days, starting 10 working
3 days after consultation period for the draft amendment ends.

4 **Division 5.2.4 Action after consultation about draft**
5 **major plan amendments**

6 **64 Revision and withdrawal of draft major plan amendments**

- 7 (1) After the end of the consultation period for a draft major plan
8 amendment, the territory planning authority may—
9 (a) revise the draft amendment; or
10 (b) withdraw the draft amendment.
- 11 (2) In revising or withdrawing a draft major plan amendment, the
12 territory planning authority must consider written comments
13 (including consultation comments) about the draft amendment
14 received from any entity, including the national capital authority.
- 15 (3) The territory planning authority may, at any time before a draft major
16 plan amendment is given, or given again, to the Minister, revise the
17 draft amendment to correct a formal error.
- 18 (4) The withdrawal of a draft major plan amendment must include a
19 statement that the interim effect of the draft amendment ends on the
20 day the draft amendment is withdrawn.
- 21 (5) The territory planning authority must publish on the authority website
22 notice of the withdrawal of a draft major plan amendment on the same
23 day, or as soon as practicable after, the authority prepares the
24 withdrawal.

Division 5.2.5 Draft major plan amendments given to Minister

65 Draft major plan amendments to be given to Minister etc

(1) This section applies to a draft major plan amendment—

(a) if—

(i) the consultation period for the draft amendment has ended;
and

(ii) the territory planning authority has not withdrawn the draft amendment under section 64; and

(b) if the draft amendment has been revised under section 64—as revised.

(2) This section also applies to a draft major plan amendment in relation to which section 61 (Public consultation—notification and availability of draft major plan amendments etc) does not apply.

Note Section 61 (6) provides that s 61 does not apply in relation to certain draft major plan amendments.

(3) The territory planning authority must give the draft major plan amendment to the Minister for approval, together with the following documents:

(a) the background papers relating to the draft amendment;

(b) a written report about the authority's consultation with the following:

(i) the public;

(ii) the national capital authority;

(iii) the conservator of flora and fauna;

(iv) the environment protection authority;

(v) the heritage council;

1 (vi) if the draft amendment would, if made, be likely to affect
2 unleased land or leased public land—each custodian of the
3 land likely to be affected;

4 (c) a copy of written comments (including consultation comments)
5 about the draft amendment received from an entity mentioned in
6 paragraph (b).

7 *Note* The Minister must give a copy of the documents given to the Minister
8 under this section to the relevant Assembly committee (see s 68).

9 (4) The written report mentioned in subsection (3) (b) must include the
10 issues raised in any consultation comments about the draft major plan
11 amendment.

12 **66 Public notice of documents given to Minister**

13 The territory planning authority must publish on the authority
14 website—

15 (a) a notice stating that the documents mentioned in section 65 (3)
16 (including the draft major plan amendment) are available on the
17 website for public inspection (a *public availability notice*); and

18 (b) for the period stated in the public availability notice—copies of
19 the documents mentioned in section 65 (3).

20 **67 Public availability notice—notice of interim effect etc**

21 (1) A public availability notice must state whether or not subsection (2)
22 applies in relation to the draft major plan amendment, or part of the
23 draft amendment.

24 (2) The Territory, the Executive, a Minister or a territory authority must
25 not, during the defined period, do or approve the doing of anything
26 that would be inconsistent with the territory plan if it were amended
27 in accordance with the draft major plan amendment.

28 *Note* The Territory, the Executive, a Minister or a territory authority must also
29 not do anything that is inconsistent with the territory plan (see s 50).

- 1 (3) A public availability notice that states that subsection (2) applies in
2 relation to the draft major plan amendment, or part of the draft
3 amendment, must also state the effect of subsection (2).
- 4 (4) A public availability notice that states that subsection (2) applies in
5 relation to the draft major plan amendment, or part of the draft
6 amendment, is a notifiable instrument.
- 7 (5) In this section:
8 *defined period*, for a draft major plan amendment, means the
9 period—
10 (a) starting on the day the public availability notice for the draft
11 amendment is notified (the *notification day*) under
12 subsection (4); and
13 (b) ending on the earliest of the following days:
14 (i) the day the corresponding major plan amendment, or part
15 of it, commences;
16 *Note* See s 78 (2) and s 79 (5) (a) for when the amendment, or
17 part of it, commences.
18 (ii) if the corresponding major plan amendment is rejected by
19 the Legislative Assembly—the day it is rejected;
20 (iii) if the corresponding major plan amendment is withdrawn
21 in accordance with a requirement under section 73 (2) (b)
22 or section 79 (5) (b)—the day it is withdrawn;
23 (iv) the day that is 18 months after the notification day.

**Division 5.2.6 Consideration of draft major plan
amendments by relevant Assembly
committee**

**68 Certain draft major plan amendments given to Minister
under s 65—action by Minister**

- (1) This section applies if the Minister is given a draft major plan amendment under section 65.
- (2) Within 5 working days after the day the public availability notice for the draft major plan amendment is published on the authority website, the Minister must refer the draft amendment to the relevant Assembly committee, together with—
- (a) the documents mentioned in section 65 (3) relating to the draft amendment; and
 - (b) a request that the committee decide whether it will prepare a report on the draft amendment.

**69 Consideration of draft major plan amendments by
relevant Assembly committee**

- (1) If the Minister refers a draft major plan amendment to the relevant Assembly committee under section 68 (2), the committee must tell the Minister, within 10 working days after the day the draft amendment is referred to the committee, whether or not it will prepare a report on the draft amendment.
- (2) If the committee has not told the Minister, within the 10-day period, whether it will prepare a report, it is taken to have decided not to prepare a report.

Section 70

- 1 (3) Without limiting the matters the relevant Assembly committee may
- 2 include in a report on the draft major plan amendment, the committee
- 3 must include in the report—
- 4 (a) a recommendation that the Minister approve the draft
- 5 amendment; or
- 6 (b) another recommendation about the draft amendment.
- 7 (4) Subsection (5) applies if—
- 8 (a) the draft amendment is to facilitate the development of a
- 9 territory priority project; and
- 10 (b) if the committee decides to prepare a report on the draft
- 11 amendment—the Minister is satisfied that the risk of delay to
- 12 the development of the territory priority project will be
- 13 minimised if the committee’s report on the draft amendment
- 14 were given to the Minister earlier than 6 months after the day it
- 15 is referred to the committee.
- 16 (5) When the Minister refers the draft major plan amendment to the
- 17 relevant Assembly committee, the Minister may request that, if the
- 18 committee decides to prepare a report, the report be completed and
- 19 given to the Minister within a period stated by the Minister, that is at
- 20 least 3 months and not more than 6 months after the day the draft
- 21 amendment is referred to the committee.

70 Committee decides not to report

- 23 (1) This section applies if—
- 24 (a) the Minister has referred a draft major plan amendment to the
- 25 relevant Assembly committee under section 68 (2); and
- 26 (b) the committee has decided, or is taken to have decided, not to
- 27 prepare a report on the draft amendment.
- 28 (2) The Minister must take action in accordance with section 73 in
- 29 relation to the draft major plan amendment.

71 Committee reports on draft major plan amendments

(1) This section applies if—

- (a) the Minister has referred a draft major plan amendment to the relevant Assembly committee under section 68 (2); and
- (b) the committee has decided to prepare a report on the draft amendment.

(2) The Minister—

- (a) unless section 72 applies—must not take action under section 73 in relation to the draft major plan amendment until the relevant Assembly committee has reported on the draft amendment; and
- (b) after the committee reports on the draft amendment—must take action under section 73 in relation to the draft amendment.

72 Committee fails to report promptly on draft major plan amendments

(1) This section applies if—

- (a) the Minister has referred a draft major plan amendment to the relevant Assembly committee under section 68 (2) (Certain draft major plan amendments given to Minister under s 65—action by Minister); and
- (b) the committee has decided to prepare a report on the draft major plan amendment; and
- (c) the committee has not reported on the draft amendment by the end of—
 - (i) if the Minister’s referral is made within 4 months before a general election of members of the Legislative Assembly—

Chapter 5
Part 5.2
Division 5.2.7

Territory plan
Territory plan—major plan amendments
Ministerial and Legislative Assembly action on draft major plan amendments

Section 73

- 1 (A) if the Minister stated a period under section 69 (5)
2 (Consideration of draft major plan amendments by
3 relevant Assembly committee)—the stated period
4 commencing on the first sitting day of the Legislative
5 Assembly after the general election; or
6 (B) in any other case—6 months after the first sitting day
7 of the Legislative Assembly after the general election;
8 or
9 (ii) in any other case—
10 (A) if a period was stated by the Minister under
11 section 69 (5)—the stated period; or
12 (B) in any other case—6 months after the day the draft
13 major plan amendment is referred to the committee.
14 (2) The Minister may take action in accordance with section 73 in
15 relation to the draft major plan amendment, even though the relevant
16 Assembly committee has not reported on the amendment.

17 **Division 5.2.7 Ministerial and Legislative Assembly**
18 **action on draft major plan**
19 **amendments**

20 **73 Minister's powers in relation to draft major plan**
21 **amendments**

- 22 (1) This section applies if—
23 (a) the Minister is required to take action under this section; or
24 (b) the Minister decides under section 72 to take action under this
25 section; or

- 1 (c) the Minister revokes the approval of a draft major plan
2 amendment under section 75 (4).

3 *Note* See s 70 (2), s 71 (2) (b) and s 74 (4) for when the Minister is required to
4 take action under this section.

5 (2) The Minister must—

- 6 (a) approve the draft major plan amendment in the form given; or

7 *Note* A draft major plan amendment approved by the Minister is a major
8 plan amendment (see s 53, def **major plan amendment**).

- 9 (b) withdraw the draft major plan amendment; or

- 10 (c) return the draft major plan amendment to the territory planning
11 authority and direct the authority to do 1 or more of the
12 following:

13 (i) conduct further stated consultation;

14 (ii) consider any revision suggested by the Minister;

15 (iii) revise the draft amendment in a stated way.

- 16 (3) Before taking action under subsection (2), the Minister must consider
17 the following:

- 18 (a) the documents given to the Minister under section 65 (3) (Draft
19 major plan amendments to be given to Minister etc);

- 20 (b) any recommendation made by the relevant Assembly committee
21 in relation to the draft amendment, or related documents,
22 referred to the committee under section 68 (2) (a) or otherwise;

- 23 (c) the planning strategy;

- 24 (d) any relevant district strategy.

25 *Note* For par (b), the Minister must not take action under this section in some
26 circumstances if the committee has not reported (see s 71 and s 72).

- 1 (4) The Minister may approve a draft major plan amendment only if the
- 2 draft amendment is not inconsistent with the planning strategy or any
- 3 relevant district strategy.
- 4 (5) If the Minister approves a draft major plan amendment, the Minister
- 5 must prepare a notice that includes the following:
- 6 (a) the major plan amendment;
- 7 (b) a statement that the major plan amendment is approved;
- 8 (c) a statement that the major plan amendment must be presented to
- 9 the Legislative Assembly and may only commence by
- 10 commencement notice under section 78 (2).
- 11 (6) A notice under subsection (5) is a notifiable instrument.
- 12 (7) The following must be published on the authority website:
- 13 (a) a decision by the Minister under subsection (2);
- 14 (b) if the decision is under subsection (2) (b) or (c)—the reasons for
- 15 the decision (if any).

16 **74 Return of draft major plan amendments to authority**

- 17 (1) This section applies if the Minister returns a draft major plan
- 18 amendment to the territory planning authority with a direction under
- 19 section 73 (2) (c).
- 20 (2) If the direction is given under section 73 (2) (c) (i) or (ii), the territory
- 21 planning authority may revise the draft major plan amendment and
- 22 give it to the Minister for approval with a written report about—
- 23 (a) the authority’s response to the Minister’s direction; and
- 24 (b) any further revision of the draft amendment under
- 25 section 64 (3).

1 (3) If the direction is given under section 73 (2) (c) (iii), the territory
2 planning authority must give the Minister the draft major plan
3 amendment, as revised in accordance with the direction, together with
4 a written report about any further revision of the draft amendment
5 under section 64 (3).

6 (4) After receiving the draft major plan amendment, the Minister must
7 take additional action under section 73 in relation to the draft
8 amendment.

9 **75 Presentation of major plan amendments to Legislative**
10 **Assembly**

11 (1) This section applies if the Minister approves a major plan amendment
12 under section 73 (2) (a).

13 (2) The Minister must present to the Legislative Assembly, not later than
14 5 sitting days after the day the Minister approves a major plan
15 amendment, copies of each of the following:

16 (a) the major plan amendment;

17 (b) the background papers relating to the amendment;

18 (c) any report mentioned in section 74 (2) or (3).

19 (3) If a major plan amendment is not presented to the Legislative
20 Assembly in accordance with subsection (2), the major plan
21 amendment does not come into effect.

22 (4) However, the Minister may, at any time before the major plan
23 amendment is presented to the Legislative Assembly, revoke the
24 approval and reconsider the amendment as a draft major plan
25 amendment under section 73.

- 1 **76 Assembly may reject major plan amendments completely**
2 **or partly**
- 3 (1) The Legislative Assembly may, by resolution, reject a major plan
4 amendment, or a provision of the major plan amendment, presented
5 to the Assembly.
- 6 (2) Notice of a motion to reject the major plan amendment or a provision
7 of the major plan amendment (a *rejection notice*) must be given not
8 later than 5 sitting days after the day the major plan amendment is
9 presented to the Legislative Assembly.
- 10 (3) The major plan amendment or provision stated in a rejection notice
11 given in accordance with subsection (2) is taken to have been rejected
12 by the Legislative Assembly if, at the end of 5 sitting days after the
13 day the rejection notice has been given in the Legislative Assembly—
- 14 (a) the motion has not been called on; or
- 15 (b) the motion has been called on and moved and has not been
16 withdrawn or otherwise disposed of.
- 17 **77 Effect of dissolution etc of Legislative Assembly**
- 18 (1) This section applies if, before the end of 5 sitting days after the day a
19 rejection notice has been given in the Legislative Assembly under
20 section 76 (2)—
- 21 (a) the Legislative Assembly is dissolved or expires; and
- 22 (b) at the time of dissolution or expiry—
- 23 (i) the notice has not been withdrawn and the motion has not
24 been called on; or
- 25 (ii) the motion has been called on and moved and has not been
26 withdrawn or otherwise disposed of.

(2) The major plan amendment is taken, for section 76 (2) and (3), to have been presented to the Legislative Assembly on the first sitting day of the Legislative Assembly after the next general election of members of the Assembly.

(3) In this section:

rejection notice—see section 76 (2).

Division 5.2.8 Commencement and publication of major plan amendments

78 Commencement and publication of major plan amendments

(1) This section applies if—

(a) at the end of 5 sitting days after the day a major plan amendment is presented to the Legislative Assembly, the Assembly has not passed a resolution rejecting the amendment or any provision of the amendment; and

(b) the major plan amendment, or a provision of the major plan amendment is not taken to have been rejected under section 76 (3) (Assembly may reject major plan amendments completely or partly).

(2) The major plan amendment commences on a day fixed by the Minister by written notice.

(3) The territory planning authority must publish a commencement notice under subsection (2) on the authority website.

79 Rejection of major plan amendments by Legislative Assembly

(1) This section applies if a major plan amendment, or a provision of the major plan amendment, is rejected, or taken to be rejected, under section 76 (Assembly may reject major plan amendments completely or partly).

- 1 (2) The major plan amendment, or provision of the major plan
2 amendment, does not come into force if the provision is—
- 3 (a) rejected, or taken to be rejected, by the Legislative Assembly
4 under section 76 (3); or
- 5 (b) withdrawn under subsection (5) (b).
- 6 (3) The territory planning authority must, in relation to each provision of
7 the major plan amendment that is rejected, prepare a notice stating
8 that the provision of the amendment has been rejected.
- 9 *Note* A single notice may be prepared for 1 or more rejected provisions.
- 10 (4) The notice is a notifiable instrument.
- 11 (5) The Minister must, in relation to each provision of the major plan
12 amendment that is not rejected—
- 13 (a) fix a day when the provision is to commence; or
- 14 (b) withdraw the provision.
- 15 *Note* On commencement, a provision of a major plan amendment amends the
16 territory plan according to its terms.
- 17 (6) A withdrawal under subsection (5) (b) is a notifiable instrument.
- 18 (7) If the notifiable instrument does not state when the instrument
19 expires, the instrument expires 6 months after the day it is notified.
- 20 (8) The territory planning authority must publish notice of the following
21 on the authority website:
- 22 (a) a notice under subsection (3);
- 23 (b) a commencement notice under subsection (5) (a);
- 24 (c) a withdrawal under subsection (5) (b).

**Division 5.2.9 Limitations on challenge to validity of
territory plan provisions**

**80 Limitations on challenge to validity of territory plan
provisions**

- (1) The validity of a provision of the territory plan must not be questioned in any legal proceeding other than a proceeding begun not later than 3 months after the day the provision, or an amendment of the provision, commenced.
- (2) The validity of a provision of the territory plan must not be questioned in any legal proceeding only because the major plan amendment that inserted or amended the provision was inconsistent with the planning strategy or a district strategy.

Part 5.3 Territory plan—minor plan amendments

81 Definitions—pt 5.3

In this part:

limited consultation—see section 84 (1).

minor plan amendment—see section 82.

82 What is a *minor plan amendment* and is consultation needed?

(1) Each of the following territory plan amendments is a *minor plan amendment* for which no consultation is needed before it is made under section 83:

(a) an amendment that—

(i) would not adversely affect anyone's rights if approved; and

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

(b) an amendment to change the boundary of a zone under section 85 (Rezoning—boundary changes);

(c) an amendment, other than one to which subsection (2) (b) applies, in relation to a subdivision design application under section 44 (Effect of approval of subdivision design application);

(d) an amendment required to bring the territory plan into line with the national capital plan;

- 1 (e) an amendment to omit something that is obsolete or redundant
2 in the territory plan.

3 **Example—obsolete or redundant thing**

4 a provision of the territory plan that has become redundant because of the
5 enactment of a law that applies in the Territory

- 6 (2) Each of the following territory plan amendments is a minor plan
7 amendment for which only limited consultation is needed under
8 section 84:

- 9 (a) an amendment to change the boundary of a zone under
10 section 86 (Rezoning—development encroaching on adjoining
11 land);

- 12 (b) an amendment in relation to a subdivision design application
13 under section 44 (Effect of approval of subdivision design
14 application) if it incorporates an ongoing provision that was not
15 included in the plan under section 43 (2) (g) (Subdivision design
16 applications);

- 17 (c) an amendment to clarify the language in the territory plan if it
18 does not change the substance of the plan;

- 19 (d) an amendment to relocate a provision within the territory plan if
20 the substance of the provision is not changed;

- 21 (e) an amendment that—

22 (i) would only change a code; and

23 (ii) is consistent with the desired outcomes and policy
24 framework of the code; and

25 (iii) is not an amendment mentioned in subsection (1) (a);

- 26 (f) an amendment in relation to a future urban area under
27 section 87.

28 *Note* An amendment to rezone land that is not in a future urban area is not a
29 minor plan amendment.

83 Making minor plan amendments

- (1) This section applies if—
- (a) the territory planning authority is satisfied that a territory plan amendment would, if made, be a minor plan amendment; and
 - (b) any limited consultation needed for the amendment has taken place.
- (2) The territory planning authority may only make a minor plan amendment if the amendment is not inconsistent with the planning strategy or any relevant district strategy.
- (3) A minor plan amendment is a notifiable instrument.
- (4) A minor plan amendment commences on a day fixed by the territory planning authority by written notice.
- (5) Not later than 5 working days after the day a minor plan amendment is notified under the [Legislation Act](#), the territory planning authority must publish on the authority website—
- (a) a copy of the amendment as notified; and
 - (b) any other information considered by the authority to be necessary or useful in explaining the minor amendment.

84 Limited consultation

- (1) The territory planning authority undertakes *limited consultation* for a proposed minor plan amendment if the authority complies with this section in relation to the amendment.
- (2) The territory planning authority must publish on the authority website—
- (a) a copy of the proposed minor plan amendment and information about the amendment; and

1 (b) a notice that—

2 (i) states the consultation period and how written comments
3 (*consultation comments*) may be made on the amendment;
4 and

5 (ii) states that a copy of any consultation comments will be
6 made available on the authority website for at least
7 15 working days, starting 10 working days after the end of
8 the consultation period; and

9 (c) a copy of the documents mentioned in paragraph (b) (ii).

10 *Note* Section 498 and s 499 apply to a person who makes consultation
11 comments under this section.

12 (3) The territory planning authority must tell the national capital
13 authority about the minor plan amendment.

14 (4) The territory planning authority must consider—

15 (a) any consultation comments made in the consultation period and
16 in accordance with the notice under subsection (2) (b); and

17 (b) any views of the national capital authority.

18 (5) In this section:

19 *consultation period* means a stated period of at least 20 working days.

20 **85 Rezoning—boundary changes**

21 (1) This section applies to a zone in relation to land if the land adjoins
22 unleased land or land for which the Territory is the registered
23 proprietor (the *adjoining land*).

24 (2) The territory planning authority may amend the territory plan under
25 section 83 (Making minor plan amendments) to change the boundary
26 of the zone to encroach onto the adjoining land if the change is
27 consistent with—

28 (a) the apparent intent of the original boundary line; and

- 1 (b) the desired outcomes for the zone.
- 2 (3) The territory planning authority may amend the territory plan under
- 3 section 83 to change the boundary of the zone to encroach onto the
- 4 adjoining land if—
- 5 (a) the authority is advised to do so by—
- 6 (i) the conservator of flora and fauna; or
- 7 (ii) the custodian of the land for the zone; and
- 8 (b) the conditions in subsection (2) (a) and (b) are satisfied.

9 **86 Rezoning—development encroaching on adjoining land**

- 10 (1) The territory planning authority may amend the territory plan under
- 11 section 83 (Making minor plan amendments) to change the boundary
- 12 of a zone consistent with a development proposal under
- 13 section 156 (Declaration for development encroaching on adjoining
- 14 land if development prohibited) if the authority makes a declaration
- 15 that the proposal satisfies the criteria in section 156 (2).

16 *Note* Under s 156 and s 157, a person may apply for development approval of

17 a development proposal that encroaches on adjoining land if the

18 development would otherwise be prohibited on the land. However,

19 development approval must not be given until the minor plan amendment

20 has commenced under s 83 (see s 182 (2) (b)).

- 21 (2) However, the territory planning authority must not amend the
- 22 territory plan under section 83 to change the boundary of the zone if
- 23 the adjoining land is designated as a future urban area under the
- 24 territory plan.
- 25 (3) In this section:
- 26 *adjoining land*—see section 85 (1).

- 1 **87 Minor plan amendments—future urban areas**
- 2 (1) The territory planning authority may amend the territory plan under
- 3 section 83 (Making minor plan amendments) to rezone land in a
- 4 future urban area, and make or amend a district code in relation to the
- 5 land, unless the amendment is inconsistent with the principles and
- 6 policies in the relevant district strategy.
- 7 (2) The territory planning authority may amend the territory plan under
- 8 section 83 to change the boundary of a future urban area if the change
- 9 is consistent with the relevant district strategy.
- 10 (3) However, the territory planning authority must not amend the
- 11 territory plan under section 83 to change the boundary of a future
- 12 urban area if part of the boundary proposed to be changed is aligned
- 13 with the boundary of an existing leasehold.

Part 5.4 Review of territory plan

88 Consideration of whether review of territory plan necessary

(1) The Minister must, at least once every 5 years—

- (a) decide whether the territory plan should be reviewed; and
- (b) if the Minister decides that the territory plan should be reviewed—direct the territory planning authority to review the territory plan.

Note 1 The territory planning authority must also review the territory plan if directed to do so by the Minister (see s 19 and s 20 (1) (b)).

Note 2 A direction mentioned in s (1) (b) is a notifiable instrument (see s 20 (3)).

(2) In deciding whether the territory plan should be reviewed, the Minister—

- (a) must consider whether the territory plan—
 - (i) is consistent with the object of this Act; and
 - (ii) is consistent with the object of the territory plan; and
 - (iii) gives effect to the plan's object in a way that is not inconsistent with the national capital plan; and
 - (iv) gives effect to the plan's object in a way that gives effect to the principles of good planning in section 10; and
 - (v) promotes the planning strategy; and
- (b) may consult with the community on whether the territory plan should be reviewed.

(3) The Minister may delay making a decision to review the territory plan for not more than 1 year.

- 1 (4) The territory planning authority must publish on the authority website
2 notice of—
3 (a) the decision under subsection (1); and
4 (b) any decision under subsection (3).
5 (5) A decision by the Minister not to review the territory plan does not
6 affect the territory planning authority's function under
7 section 18 (1) (b) of continually reviewing the territory plan.

8 **89 Review of territory plan**

- 9 (1) This section applies if the Minister directs the territory planning
10 authority under section 20 (1) (b) to review the territory plan.

11 *Note* See also s 88 (1) (b).

- 12 (2) The territory planning authority must review the territory plan and
13 consider the following:
14 (a) whether the territory plan remains consistent with the national
15 capital plan;
16 (b) whether the territory plan continues to further the object of this
17 Act and the object of the territory plan in accordance with the
18 principles of good planning;
19 (c) whether the territory plan remains consistent with the planning
20 strategy and district strategies;
21 (d) whether the territory plan takes into account any planning
22 outcomes contained in other government strategies and policies
23 that may be relevant;
24 (e) anything else prescribed by regulation.
25 (3) After reviewing the territory plan, the territory planning authority
26 must prepare a report (a ***draft review report***)—
27 (a) stating that the authority has reviewed the plan; and
28 (b) stating the authority's findings on the review; and

- 1 (c) if the authority considers that the territory plan should be
2 amended—including the proposed amendment of the territory
3 plan.
- 4 (4) The territory planning authority must consult with each of the
5 following in relation to the draft review report:
- 6 (a) the public;
7 (b) the national capital authority;
8 (c) the conservator of flora and fauna;
9 (d) the environment protection authority;
10 (e) the heritage council;
11 (f) each referral entity;
12 (g) if any territory plan amendment in the review report would, if
13 made, be likely to affect unleased land or leased public land—
14 each custodian of the land likely to be affected.

15 **90 Action after consultation about draft review report**

- 16 (1) After the end of the consultation period for a draft review report, the
17 territory planning authority may revise the draft review report.
- 18 (2) In revising the draft review report, the territory planning authority
19 must consider written comments (including consultation comments)
20 about the draft review report received in the consultation period.
- 21 (3) The territory planning authority may, at any time before the draft
22 review report is given, or given again, to the Minister, revise the
23 report to correct a formal error.

91 Draft review report to be given to Minister etc

(1) The territory planning authority must give the draft review report to the Minister, together with the following documents:

(a) a written report about the authority's consultation with the following:

(i) the public;

(ii) the national capital authority;

(iii) the conservator of flora and fauna;

(iv) the environment protection authority;

(v) the heritage council;

(vi) each referral entity;

(vii) if any territory plan amendment in the review report would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected;

(b) a copy of any written document given to the Minister by the national capital authority in relation to the draft review report.

(2) The written report mentioned in subsection (1) (a) must include a statement about the issues raised in any consultation comments about the draft review report.

Note If the Minister accepts the draft review report, the Minister may direct the territory planning authority to amend the territory plan.

1 **Chapter 6 Significant development**

2 **Part 6.1 Preliminary**

3 **92 Meaning of *significant development***

4 A proposed development is a *significant development* if it requires
5 any of the following:

- 6 (a) a subdivision design application under section 43;
- 7 (b) consultation with the design review panel under section 98;
- 8 (c) an environmental impact statement under section 103.

9 *Note* A regulation cannot exempt a significant development from requiring
10 development approval (see s 143 (2)).

Part 6.2 Design review panel

93 Establishment of design review panel

The Design Review Panel is established.

94 Functions of design review panel

The design review panel has the following functions:

- (a) to provide design advice to proponents of development proposals;
- (b) to exercise any other function given to the panel under this Act or another territory law.

95 Members of design review panel

- (1) The design review panel consists of at least 3 of the following members:
 - (a) the person engaged as the government architect;
 - (b) a representative of the national capital authority;
 - (c) 1 or more members contracted under subsection (2) to provide design review services to the panel.
- (2) The territory planning authority may, on behalf of the Territory, enter into a contract for services with a person to provide design review services to the design review panel.
- (3) However, the territory planning authority may enter into a contract with a person only if satisfied that the person has appropriate expertise in architecture, urban design, urban planning, landscape architecture, engineering or another area relevant to the urban environment.

- 1 (4) The contract must include conditions to ensure the accountability,
2 transparency and independence of contracted panel members,
3 including conditions about the following:
- 4 (a) ending the member's contract;
5 (b) disclosure of interests;
6 (c) conflicts of interest.

7 **96 Rules for design review panel**

- 8 (1) The Minister may make rules (*design review panel rules*) for the
9 design review panel, including rules about—
- 10 (a) terms of reference for the panel; and
11 (b) constitution of the panel; and
12 (c) conducting meetings of the panel; and
13 (d) processes and procedures for reviewing development proposals.

14 **Examples—pars (a) to (c)**

- 15 1 the quorum at meetings
16 2 who presides at meetings
17 3 how questions are resolved at meetings
18 4 how conflicts of interest are dealt with at meetings

19 **Examples—par (d)**

- 20 1 site inspections
21 2 sources of best practice for design review

- 22 (2) The design review panel rules may apply, adopt or incorporate an
23 instrument as in force from time to time.

- 24 (3) The [Legislation Act](#), section 47 (6) does not apply to an instrument
25 applied, adopted or incorporated under subsection (2).

26 *Note* The instrument does not need to be notified under the [Legislation Act](#)
27 because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

- 1 (4) The design review panel rules must be published on the authority
2 website.

3 **97 Design principles**

- 4 (1) The Minister may make principles (*design principles*) to be used by
5 the design review panel in assessing development proposals under
6 this Act.

- 7 (2) The design principles must be published on the authority website.

8 **98 When design review panel consultation is required**

- 9 (1) Before submitting a development application for a prescribed
10 development proposal, the proponent must consult the design review
11 panel about the proposal.

- 12 (2) Also, if the Minister is satisfied that a development proposal is likely
13 to be of economic, social or environmental significance to the
14 Territory, the Minister may require the proponent to consult the
15 design review panel about the proposal.

- 16 (3) In addition, the proponent of any other development proposal may
17 consult the design review panel about the proposal.

- 18 (4) If the proponent of a development proposal consults the design
19 review panel about the proposal, the consultation must be undertaken
20 in accordance with any design review panel rules.

21 **99 Advice of design review panel**

- 22 (1) This section applies if—
23 (a) the proponent of a development proposal consults the design
24 review panel about the proposal under section 98; or
25 (b) the territory planning authority refers a development proposal in
26 a development application to the design review panel under
27 section 169 (2) (b).

- 1 (2) The design review panel must—
2 (a) consider the proposal; and
3 (b) either—
4 (i) provide the proponent with advice about how the proposal
5 could be made consistent, or more consistent, with any
6 design principles (*design advice*); or
7 (ii) tell the proponent that the panel has no advice about the
8 proposal; and
9 (c) if the panel provides the proponent with design advice—give a
10 copy of the design advice to the territory planning authority.
11 *Note* If design advice is given for a prescribed development, the proponent's
12 response to the design advice must be included in the development
13 application (see s 164 (2) (d)).
14 (3) If the proponent does not submit a development application for the
15 development proposal within 18 months after the design advice is
16 provided, the design advice expires.

Part 6.3 Environmental impact assessment

Division 6.3.1 Outline and key concepts

100 Outline of environmental impact assessment

- (1) Formal assessment of a development proposal's potential environmental impact (*environmental impact assessment*) is required for certain proposals.
- (2) Environmental impact assessment is typically in the form of an environmental impact statement (an *EIS*) (see s 103), but in some cases a proponent may instead apply for an opinion indicating that the proposal is not likely to have a significant adverse environmental impact (an *environmental significance opinion*) (see s 136).
- (3) A development application for a development proposal requiring environmental impact assessment must include a finalised EIS or an environmental significance opinion (see s 164 (2) (d)).
- (4) If an environmental significance opinion is given for a proposal, the proposed development is no longer a significant development.
- (5) Environmental impact assessment is taken into account in deciding a development application but is not itself a development application or a development approval process.
- (6) This section is intended only as a guide to readers.

101 Outline of EIS process

- (1) If this Act requires an EIS for a development proposal, the proponent of the proposal must apply to the territory planning authority for a document to identify the matters to be addressed in the EIS (see s 107).
- (2) The territory planning authority must prepare and give a scoping document to the proponent (see s 107 to s 109).

- 1 (3) The proponent must prepare a draft EIS (see s 110).
- 2 (4) The territory planning authority must publicly notify the draft EIS
- 3 (see s 112), and anyone may make a representation about the
- 4 draft EIS (see s 113).
- 5 (5) The proponent must revise the draft EIS and give the revised EIS to
- 6 the territory planning authority (see s 116).
- 7 (6) The territory planning authority must consider the EIS (see s 119)
- 8 and—
- 9 (a) accept the EIS (see s 119 (2)); or
- 10 (b) give the proponent another opportunity to revise the EIS
- 11 (see s 120); or
- 12 (c) reject the EIS (see s 121).
- 13 (7) If the territory planning authority accepts an EIS, the authority
- 14 must—
- 15 (a) give the EIS to the Minister (see s 123); and
- 16 (b) prepare an EIS assessment report (see s 124).
- 17 (8) After receiving an EIS, the Minister may—
- 18 (a) establish an inquiry panel to inquire about the EIS (see s 130);
- 19 or
- 20 (b) give the authority a notice of no action on the EIS (see s 125).
- 21 (9) An EIS generally expires 5 years after the day it is finalised
- 22 (see s 129).
- 23 (10) This section is intended only as a guide to readers.

102 Meaning of *significant* adverse environmental impact

- (1) For this Act, an adverse environmental impact is *significant* if—
- (a) the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant; or
 - (b) the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system, value or entity.
- (2) In deciding whether an adverse environmental impact is *significant*, the following matters must be taken into account:
- (a) the kind, size, frequency, intensity, scope and length of time of the impact;
 - (b) the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.
- (3) In deciding whether a development proposal is likely to have a significant adverse environmental impact, it does not matter whether the adverse environmental impact is likely to occur on the site of the development or elsewhere.

Division 6.3.2 EIS requirements

103 When EIS is required

- (1) An EIS is required for a development proposal if—
- (a) the proposal is prescribed by regulation; or
 - (b) the Minister makes a declaration in relation to the proposal under section 104; or

- 1 (c) the Commonwealth Minister responsible for administering the
2 [EPBC Act](#) advises the Minister in writing that the proposed
3 development—
- 4 (i) is a controlled action under that [Act](#), section 76 (Minister
5 may request more information for making decisions); and
- 6 (ii) does not require assessment under that [Act](#), part 8
7 (Assessing impacts of controlled actions) because a
8 bilateral agreement between the Commonwealth and the
9 Territory under that Act allows the proposal to be assessed
10 under this Act; or
- 11 (d) the Public Health Act Minister makes a declaration under the
12 [Public Health Act 1997](#), section 134 in relation to a development
13 application for the proposal and—
- 14 (i) the application is publicly notified; and
- 15 (ii) the declaration is made during the public notification
16 period for the application.
- 17 (2) However, an EIS is not required for a development proposal if an
18 environmental significance opinion has been given for the proposal.
- 19 *Note* See s 136 for when a proponent may apply for an environmental
20 significance opinion.

21 **104 EIS—declaration by Minister**

- 22 (1) The Minister may, in writing, declare that an EIS must be undertaken
23 for a development proposal.
- 24 (2) However, the Minister must not make a declaration in relation to the
25 development proposal unless satisfied on reasonable grounds that
26 there is a risk of significant adverse environmental impact from the
27 proposed development.
- 28 *Note* The Minister may publish guidelines about how the Minister will exercise
29 power under this section (see s 515).

-
- 1 **105 Effect of declaration made after development application**
- 2 (1) This section applies to a development application if, after the
- 3 application is made—
- 4 (a) either—
- 5 (i) the Minister makes a declaration under section 104 in
- 6 relation to the development proposal to which the
- 7 application relates; or
- 8 (ii) the Public Health Act Minister makes a declaration under
- 9 the *Public Health Act 1997*, section 134 in relation to the
- 10 application; and
- 11 (b) the application does not satisfy the application requirements for
- 12 a development requiring environmental impact assessment.
- 13 (2) The development application is taken to have been withdrawn.
- 14 (3) The territory planning authority must give the applicant notice of the
- 15 effect of this section.
- 16 **106 Designated proponents for certain EIS decisions**
- 17 (1) The relevant Minister in relation to a defined decision may, in writing,
- 18 designate a person or territory authority as the proponent in relation
- 19 to the decision.
- 20 (2) In this section:
- 21 *defined decision* means a decision of the Territory, the Executive, a
- 22 Minister or a territory authority about a proposal in relation to which
- 23 a Minister is empowered—
- 24 (a) to direct that an EIS be prepared; or
- 25 (b) to establish an inquiry panel to inquire about the EIS.

1 **relevant Minister** means the Minister responsible for the
2 administration of the Act or subordinate law under which—

3 (a) in relation to a statement or inquiry—the statement or inquiry is
4 authorised to be prepared or conducted; or

5 (b) in relation to a defined decision—the relevant decision is
6 authorised to be made.

7 **Division 6.3.3 Scope of EIS**

8 **107 Application for EIS scoping document**

9 (1) A proponent of a development proposal must apply to the territory
10 planning authority under this section if an EIS is required under
11 section 103 for the proposal.

12 (2) The territory planning authority must—

13 (a) identify the matters that are to be addressed by an EIS in relation
14 to the development proposal; and

15 (b) prepare a document of the matters (the **scoping document**); and

16 (c) publish the application for the scoping document and documents
17 in support of the application on the authority's website.

18 *Note* The time for giving a scoping document to the applicant is set out in
19 s 109.

20 (3) A regulation may prescribe entities the territory planning authority
21 may or must consult in preparing a scoping document.

22 **108 Contents of scoping document**

23 (1) The matters identified in the scoping document for a development
24 proposal must include any minimum content for scoping documents
25 prescribed by regulation.

- 1 (2) The territory planning authority may, in the scoping document for a
2 development proposal—
- 3 (a) require the proponent to engage a consultant to help prepare an
4 EIS for the proposal; and
- 5 (b) set a shorter period within which a draft EIS must be provided
6 to the authority under section 110; and
- 7 (c) request any other information relevant to the proposal.
- 8 (3) In this section:
- 9 *consultant* means a person who satisfies the criteria prescribed by
10 regulation.
- 11 **109 Time to provide scoping document**
- 12 (1) The territory planning authority must give a scoping document for a
13 development proposal to the proponent of the proposal within—
- 14 (a) 30 working days after the day the proponent makes an
15 application under section 107; or
- 16 (b) if the chief planner extends the period to give the scoping
17 document under subsection (2)—the extended period.
- 18 (2) The chief planner may, in writing, extend the period to give a scoping
19 document for a development proposal if satisfied that, because of the
20 complexity of the proposal and the consultation required, the
21 extension is necessary.
- 22 (3) The chief planner must give written notice of an extension under
23 subsection (2) to the proponent of the development proposal.

Division 6.3.4 Drafting EIS

110 Preparing draft EIS

- (1) After the territory planning authority gives a scoping document for a development proposal to the proponent of the proposal, the proponent must—
- (a) prepare a document that addresses each matter raised in the scoping document (a *draft EIS*); and
 - (b) give the draft EIS to the territory planning authority for public notification within—
 - (i) 18 months starting on the day after the scoping document is completed; or
 - (ii) if a shorter period was set under section 108 (2) (b)—the shorter period; or
 - (iii) if the authority extends the period to give the draft EIS under subsection (2)—the extended period.
- (2) The territory planning authority may extend the period for the proponent to give a draft EIS to the authority, but only once.
- (3) The regulations may prescribe requirements in relation to the preparation of a draft EIS.

111 Recent studies to support draft EIS

- (1) This section applies if the expected environmental impact of a development proposal has been addressed by a recent study, whether or not the recent study relates directly to the development proposal.

Examples—recent study that may address the expected environmental impact of a development proposal

- 1 a report about the ecological value of an area
- 2 an environmental impact statement under the [EPBC Act](#), pt 8 (Assessing impacts of controlled actions)

- 1 3 an endorsed policy, plan or program under the [EPBC Act](#), pt 10 (Strategic
2 assessments)
- 3 (2) The draft EIS may refer to the recent study to address a matter
4 identified in the scoping document for the proposal.
- 5 (3) In deciding whether the environmental impact of the proposal has
6 been sufficiently addressed by the recent study, the territory planning
7 authority must consider—
- 8 (a) whether the recent study was conducted by an appropriately
9 qualified person with relevant expertise and experience in
10 relation to the environmental values of the land in the proposal;
11 and
- 12 (b) if the recent study does not relate directly to the proposal—
13 whether the study is sufficiently detailed to allow assessment of
14 the environmental impacts likely to occur if the proposal
15 proceeds; and
- 16 (c) whether the part of the recent study relevant to the proposal
17 required public consultation through a statutory process or as
18 part of a government policy development.
- 19 **Example—par (c)**
20 the public consultation process for a draft major plan amendment under div 5.2.3
- 21 (4) If the recent study is more than 18 months old, the draft EIS must
22 include a statement, from an appropriately qualified person with no
23 current professional relationship with the proponent, verifying that
24 the information in the recent study is current.
- 25 (5) In this section:
26 *recent study* means a study that is less than 5 years old.

1 **Division 6.3.5 Consultation on EIS**

2 **112 Public notification of draft EIS**

3 The territory planning authority must do the following things in
4 relation to a draft EIS to *publicly notify* the draft EIS:

- 5 (a) give public notice stating—
- 6 (i) that the draft EIS is available for public inspection and for
7 purchase at stated places and times; and
- 8 (ii) how representations may be made on the draft EIS; and
- 9 (iii) the period, at least 20 working days, during which
10 representations may be made on the draft EIS (the *public*
11 *consultation period*);
- 12 (b) make 1 or more copies of the draft EIS available as stated in the
13 public notice;
- 14 (c) make a copy of the draft EIS available on the authority website;
- 15 (d) display a sign on the site of the development to which the
16 draft EIS relates stating the matters under paragraph (a).

17 **113 Representations about draft EIS**

- 18 (1) Anyone may make a representation about a draft EIS publicly notified
19 under section 112.
- 20 (2) A representation about a draft EIS must be made during the public
21 consultation period for the draft EIS.
- 22 (3) The territory planning authority may give public notice to extend the
23 public consultation period.
- 24 (4) If the territory planning authority extends the public consultation
25 period, the authority must give the proponent of the development
26 proposal written notice of the extension.

- 1 (5) A person who makes a representation about a draft EIS may, in
2 writing, withdraw the representation at any time before the territory
3 planning authority accepts the EIS under section 119 (2) (a).

4 **114 Publication of representations about draft EIS**

- 5 (1) This section applies if a person makes a representation about a
6 draft EIS in accordance with the public notice for the draft EIS under
7 section 112.
- 8 (2) The territory planning authority must—
- 9 (a) make a copy of the representation available on the authority
10 website until—
- 11 (i) the EIS is finalised; or
- 12 (ii) the representation is withdrawn; and
- 13 (b) give a copy of the representation to the proponent of the
14 development proposal as soon as practicable after the public
15 consultation period for the draft EIS ends.

16 *Note* This section is subject to s 498 and s 499.

17 **115 Entity consultation on draft EIS**

18 The territory planning authority may—

- 19 (a) consult on a draft EIS with any entity prescribed for
20 section 107 (3); and
- 21 (b) give a copy of any submission made by the entity to the
22 proponent of the development proposal.

1 **Division 6.3.6 Revision of EIS**

2 **116 Revision of draft EIS**

- 3 (1) After the public consultation period for a draft EIS, the territory
4 planning authority must give the proponent of the development
5 proposal written notice of the period within which the proponent
6 must—
- 7 (a) revise the draft EIS; and
- 8 (b) give the revised EIS to the authority.
- 9 (2) The period in subsection (1) must be at least 30 days, but not more
10 than 18 months, after the day the territory planning authority gives
11 the notice.
- 12 (3) The territory planning authority may extend the period in
13 subsection (1), but only once.
- 14 (4) The revised EIS must—
- 15 (a) address each matter identified in the scoping document for the
16 development proposal; and
- 17 (b) if a matter is raised in a representation made during the public
18 consultation period—address the matter and demonstrate how
19 the matter has been taken into account; and
- 20 (c) if a matter is raised in a submission under section 115 for the
21 draft EIS—address the matter and demonstrate how the matter
22 has been taken into account.

23 **117 Public notification of revised EIS**

- 24 (1) The territory planning authority may publicly notify a revised EIS as
25 if it were a draft EIS under section 112 if the authority is satisfied
26 that—
- 27 (a) the revised EIS is significantly different from the draft EIS; and

- 1 (b) public notification of the revised EIS is justified because of the
2 difference.
- 3 (2) However, there is no minimum period during which representations
4 may be made on a revised EIS.
- 5 *Note* Normally the public consultation period for a draft EIS cannot be less
6 than 20 working days (see s 112 (a) (iii)), but this does not apply to a
7 revised EIS.
- 8 (3) If the territory planning authority publicly notifies a revised EIS, the
9 following provisions apply to the revised EIS as if it were a draft EIS:
- 10 (a) section 113 (Representations about draft EIS);
- 11 (b) section 114 (Publication of representations about draft EIS);
- 12 (c) section 115 (Entity consultation on draft EIS);
- 13 (d) section 116 (Revision of draft EIS).

14 **Division 6.3.7 Consideration of EIS**

15 **118 Rejection of EIS before consideration**

- 16 (1) This section applies if the proponent of a development proposal fails
17 to give the territory planning authority a revised EIS within the time
18 required by a written notice under section 116 (1).
- 19 (2) The territory planning authority must reject the EIS and give the
20 proponent written notice of the rejection.
- 21 *Note* If the EIS is rejected, the EIS process ends and a new process must be
22 started.

23 **119 Authority consideration of EIS**

- 24 (1) This section applies if the proponent of a development proposal gives
25 the territory planning authority a revised EIS—
- 26 (a) within the time required by written notice under section 116 (1);
27 or

- 1 (b) in accordance with a written notice under section 120 (2).
- 2 (2) The territory planning authority must—
- 3 (a) if satisfied that the revised EIS meets the requirements
- 4 mentioned in section 116 (4)—accept the revised EIS; or
- 5 (b) if section 120 applies—take action under section 120; or
- 6 (c) if section 121 applies—take action under section 121.
- 7 (3) In making a decision under this division, the territory planning
- 8 authority must consult each entity that made a submission to the
- 9 authority about the scoping document for the draft EIS under
- 10 section 107 (3).
- 11 **120 Chance to address unaddressed matters**
- 12 (1) This section applies in relation to a revised EIS for a development
- 13 proposal if the territory planning authority—
- 14 (a) is not satisfied that the revised EIS meets the requirements
- 15 mentioned in section 116 (4); and
- 16 (b) has not given a second written notice in relation to the revised
- 17 EIS under subsection (2).
- 18 (2) The territory planning authority must give the proponent of the
- 19 development proposal written notice stating the following:
- 20 (a) that the authority does not accept the EIS;
- 21 (b) why the authority does not accept the EIS;
- 22 (c) that the proponent must provide a new revised EIS within a
- 23 stated period of at least 20 working days.

1 **121 Rejection of EIS after consideration**

2 (1) This section applies if the territory planning authority gives the
3 proponent of a development proposal a second written notice under
4 section 120.

5 (2) The territory planning authority must reject the revised EIS if—

6 (a) the proponent does not provide a new revised EIS within the
7 period stated in the notice; or

8 (b) the proponent responds within the period stated in the notice but
9 the authority remains unsatisfied in relation to a matter
10 mentioned in section 116 (4).

11 *Note* If the EIS is rejected, the EIS process ends and a new process must be
12 started.

13 **122 Cost recovery**

14 The territory planning authority may recover from the proponent of a
15 development proposal to which an EIS relates the direct and indirect
16 costs incurred by the authority—

17 (a) in preparing an EIS assessment report for the proposal under
18 section 124; and

19 (b) in engaging a consultant to assist with the collection or analysis
20 of information relevant to the authority's assessment of matters
21 under any of the following provisions:

22 (i) section 107 (3) (Application for EIS scoping document);

23 (ii) section 118 (Rejection of EIS before consideration);

24 (iii) section 119 (3) (Authority consideration of EIS);

25 (iv) section 120 (Chance to address unaddressed matters);

26 (v) section 121 (Rejection of EIS after consideration).

- 1 **123 Giving EIS to Minister**
- 2 (1) This section applies if the territory planning authority accepts an EIS
- 3 under section 119 (2) (a).
- 4 (2) However, this section does not apply if the territory planning
- 5 authority has sent an invoice to the proponent of a development
- 6 proposal for costs recoverable under section 122 and the invoice
- 7 remains unpaid.
- 8 (3) The territory planning authority must give the EIS to—
- 9 (a) the Minister; and
- 10 (b) for a public health EIS—the Public Health Act Minister.
- 11 **124 EIS assessment report**
- 12 (1) If the territory planning authority accepts an EIS under
- 13 section 119 (2) (a), the authority must prepare a report (an ***EIS***
- 14 ***assessment report***) that—
- 15 (a) confirms that the authority is satisfied in relation to the matters
- 16 mentioned in section 116 (4); and
- 17 (b) may contain additional information about how the authority
- 18 came to be satisfied in relation to those matters.
- 19 (2) The territory planning authority must—
- 20 (a) if an EIS is given to the Minister under section 123—give the
- 21 EIS assessment report to the Minister; and
- 22 (b) if a public health EIS is given to the Public Health Act Minister
- 23 under section 123—give the EIS assessment report to the Public
- 24 Health Act Minister.
- 25 (3) An EIS assessment report must be published on the authority website.

125 Notice of no action on EIS

(1) This section applies if—

- (a) the territory planning authority gives the Minister an EIS under section 123; and
- (b) the Minister decides not to establish an inquiry panel to inquire about the EIS.

(2) The Minister must give the territory planning authority written notice that the Minister has decided to take no action in relation to the EIS.

Note If the Minister gives notice under this section, the EIS to which the notice relates is finalised (see s 126).

Division 6.3.8 Finalisation and expiry of EIS

126 When EIS is *finalised*

For this Act, an EIS (other than a public health EIS) is *finalised* if—

- (a) the Minister gives the territory planning authority notice under section 125 (Notice of no action on EIS) in relation to the EIS; or
- (b) the Minister has established an inquiry panel for the EIS and—
 - (i) the panel has reported the results of the inquiry; or
 - (ii) the time for reporting under section 132 has ended.

127 When public health EIS is *finalised*

For this Act, a public health EIS is *finalised* if—

- (a) notice in relation to the EIS is given to the territory planning authority by—
 - (i) the Minister under section 125 (Notice of no action on EIS); and

- 1 (ii) the Public Health Act Minister under the *Public Health*
2 *Act 1997*, section 134 (3) (b); or
- 3 (b) at least 15 working days have elapsed since the EIS was given
4 to the Minister and the Public Health Act Minister and—
- 5 (i) the Minister has not decided, within the 15-day period
6 mentioned in section 130 (1), to establish an inquiry panel
7 to inquire about the EIS; and
- 8 (ii) the Public Health Act Minister has not decided, within the
9 15-day period mentioned in the *Public Health Act 1997*,
10 section 134 (4), that an inquiry panel to inquire about the
11 EIS must be established; or
- 12 (c) both of the following apply:
- 13 (i) notice in relation to the EIS is given to the authority by—
- 14 (A) the Minister under section 125; or
- 15 (B) the Public Health Act Minister under the *Public*
16 *Health Act 1997*, section 134 (3) (b);
- 17 (ii) at least 15 working days have elapsed since the EIS was
18 given to the Minister and the Public Health Act Minister
19 and—
- 20 (A) if the Minister gave the authority notice in relation to
21 the EIS under section 125—the Public Health Act
22 Minister has not decided, within the 15-day period
23 mentioned in the *Public Health Act 1997*,
24 section 134 (4), that an inquiry panel to inquire about
25 the EIS must be established; or
- 26 (B) in any other case—the Minister has not decided,
27 within the 15-day period mentioned in
28 section 130 (1), to establish an inquiry panel to
29 inquire about the EIS; or

- 1 (d) the Minister has established an inquiry panel for the EIS and—
2 (i) the panel has reported the results of the inquiry; or
3 (ii) the time for reporting under section 132 has ended.

4 **128 Publication of finalised EIS**

5 A finalised EIS must be published on the authority website.

6 **129 When EIS expires**

- 7 (1) An EIS expires 5 years after the day it is finalised.
8 (2) However, subsection (3) applies if an EIS refers to a recent study in
9 accordance with section 111 and—
10 (a) the recent study is an environmental impact statement prepared
11 under the [EPBC Act](#), part 8 (Assessing impacts of controlled
12 actions) and approval of action in relation to the development
13 has been given under that [Act](#), part 9 (Approval of actions); or
14 (b) the recent study is an endorsed policy, plan or program under
15 the [EPBC Act](#), part 10 (Strategic assessments) and approval of
16 action in relation to the development has been given under that
17 [Act](#), part 10.
18 (3) The EIS expires on the latest of—
19 (a) the expiry of the approval mentioned in subsection (2) (a) or (b)
20 (whichever applies); and
21 (b) 5 years after the day the EIS is finalised.

Division 6.3.9 EIS inquiry panels

130 When to establish inquiry panel

- (1) The Minister must, within 15 working days after the day an EIS is given to the Minister under section 123—
- (a) decide whether to establish a panel (an ***inquiry panel***) to inquire about the EIS; and
- (b) if the Minister decides to establish an inquiry panel—tell the territory planning authority about the decision.
- (2) If the Minister decides to establish an inquiry panel to inquire about an EIS, the Minister may establish the panel to inquire about 1 or more aspects of the EIS.
- (3) However, if the Public Health Act Minister gives notice under the ***Public Health Act 1997***, section 134 that a panel to conduct an inquiry about an EIS should be established, the Minister must establish an inquiry panel to inquire in relation to the effects on public health of the proposal that is the subject of the EIS.
- (4) If the Minister establishes an inquiry panel to inquire about an EIS, the Minister must—
- (a) prepare terms of reference for the inquiry; and
- (b) give written notice of the inquiry to the proponent of the development proposal to which the EIS relates.
- (5) The terms of reference are a notifiable instrument.

131 How to establish inquiry panel

- (1) The Minister establishes an inquiry panel for an EIS by—
- (a) appointing 1 or more people to the panel; and
- (b) preparing written terms of reference for the inquiry.

- 1 (2) If the Minister appoints more than 1 person to an inquiry panel, the
2 Minister must, in writing, nominate a person appointed to be the
3 presiding member of the panel.
- 4 (3) However, the Minister must not appoint a person to an inquiry panel
5 unless satisfied that the person has the expertise necessary to exercise
6 the functions of the panel in relation to the matter inquired into.
- 7 (4) Also, the Minister must not appoint any of the following people to an
8 inquiry panel for an EIS:
- 9 (a) the chief planner;
- 10 (b) a member of the territory planning authority's staff;
- 11 (c) a member of the city renewal authority's staff;
- 12 (d) a member of the suburban land agency's staff;
- 13 (e) a person prescribed by regulation in relation to the EIS.

14 **132 Time for reporting by inquiry panels**

- 15 (1) An inquiry panel must report in writing to the Minister on the result
16 of the inquiry within—
- 17 (a) 60 working days after the day the Minister establishes the panel;
18 or
- 19 (b) if the period under paragraph (a) is extended under
20 subsection (2)—the extended period.
- 21 (2) The Minister may, on application by the panel, extend by written
22 notice the period for reporting.

23 **133 Inquiry panel findings and report to be independent**

- 24 (1) The report of an inquiry panel must be the view of the inquiry panel
25 based on the findings of the panel.
- 26 (2) The Minister must not direct an inquiry panel in relation to the
27 findings or report of the panel.

134 Protection of people on inquiry panels from liability

(1) A person appointed to an inquiry panel is not personally liable for anything done, or omitted to be done, honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

(2) Any liability that would, apart from this section, attach to a person appointed to an inquiry panel attaches instead to the Territory.

135 Recovery of inquiry panel costs

The direct and indirect costs to the Territory of conducting an inquiry about an EIS are recoverable from the proponent of the development proposal to which the EIS relates.

Example—indirect costs

the administrative overheads of staff exercising functions in relation to the inquiry

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

Division 6.3.10 Environmental significance opinions

136 Application for environmental significance opinion

(1) A proponent may apply for an environmental significance opinion for a proposal if a regulation states that an opinion may be given for the proposal.

Note An EIS is not required for a proposal if an environmental significance opinion is given for it (see s 103 (2)).

(2) A regulation may prescribe an agency to which a proponent may apply for an environmental significance opinion (the ***relevant agency***).

137 Environmental significance opinions given by authority

(1) If the territory planning authority is the relevant agency for an environmental significance opinion, the authority must not give an opinion unless it has consulted each of the following entities:

- (a) the work health and safety commissioner;
- (b) the environment protection authority;
- (c) the emergency services commissioner;
- (d) the technical regulator under the *Utilities (Technical Regulation) Act 2014*, section 77;
- (e) the director-general of the administrative unit responsible for the *Health Act 1993*;
- (f) if an area adjacent to the ACT could be adversely affected by development that is the subject of the development proposal—the council for the area;
- (g) an entity prescribed by regulation.

(2) In this section:

area—see the *Local Government Act 1993* (NSW), dictionary.

council—see the *Local Government Act 1993* (NSW), dictionary.

138 Deciding environmental significance opinion application

(1) A relevant agency may, by written notice, require an applicant for an environmental significance opinion to give more information in support of the application.

(2) The notice must state the period, not shorter than 20 working days, within which the applicant must respond to the notice.

(3) The relevant agency may refuse to decide the application if the requested information is not given to the agency within the stated period.

- 1 (4) A relevant agency deciding an application must—
 - 2 (a) if the relevant agency considers that the proposal is not likely to
3 have a significant adverse environmental impact—give the
4 environmental significance opinion; or
 - 5 (b) if the relevant agency considers that the proposal is not likely to
6 have a significant adverse environmental impact if the
7 development satisfies certain conditions—give the
8 environmental significance opinion subject to the stated
9 conditions (a *conditional environmental significance opinion*);
10 or
 - 11 (c) reject the application.
- 12 *Note* If a conditional environmental significance opinion has been given for a
13 development, the development approval must include a condition that the
14 development comply with the condition in the environmental
15 significance opinion (see s 184 (1) (d)).
16 In addition, an application to amend a development approval must be
17 refused if the changed development proposal would be in breach of a
18 condition on the approval relating to a conditional environmental
19 significance opinion (see s 203 (2) (a)).
- 20 (5) If a relevant agency other than the territory planning authority rejects
21 the application, the relevant agency must give written notice of the
22 rejection to the authority.
- 23 (6) If the territory planning authority rejects the application or receives
24 notice under subsection (5), the authority must give written notice of
25 the rejection to the applicant.
- 26 (7) A relevant agency is taken to have rejected an application for an
27 environmental significance opinion if the agency does not give the
28 opinion or notice under subsection (5) within—
 - 29 (a) if no information is requested under subsection (1)—30 working
30 days after the application is made to the agency; or

- 1 (b) if information is requested and the information is given to the
2 agency—30 working days after the information is given to the
3 agency; or
- 4 (c) if information is requested and the information is not given to
5 the agency within the period stated—30 working days after the
6 stated period has ended.
- 7 (8) However, the relevant agency may decide the application despite the
8 rejection of the application under subsection (7).

9 **139 Costs of environmental significance opinion**

- 10 (1) A relevant agency may recover from an applicant for an
11 environmental significance opinion the direct and indirect costs
12 incurred by the agency—
- 13 (a) in deciding an application for the opinion; and
14 (b) in preparing the opinion; and
15 (c) in engaging a consultant to assist with deciding the application
16 or preparing the opinion.
- 17 (2) If the relevant agency has sent an invoice to the applicant for the costs
18 recoverable under subsection (1), the agency must give a copy of the
19 invoice to the territory planning authority.
- 20 (3) Despite section 138 (4) and (5), the relevant agency may wait until
21 the invoice has been paid by the applicant before giving the
22 environmental significance opinion or giving notice under
23 section 138 (5).

24 **140 Notice of environmental significance opinion**

- 25 (1) This section applies to an environmental significance opinion given
26 by a relevant agency to the applicant for the opinion.
- 27 (2) The relevant agency must give a copy of the environmental
28 significance opinion to the territory planning authority when the
29 opinion is given to the applicant.

- 1 (3) The territory planning authority must prepare a notice including the
2 text of the environmental significance opinion and publish it on the
3 authority website.
- 4 (4) An environmental significance opinion and the notice including the
5 text of the opinion expire 18 months after the day the opinion is given
6 to the applicant.
- 7 (5) Giving an environmental significance opinion does not limit any
8 power the relevant agency has under this Act or any other territory
9 law.

Chapter 7 Development assessment and approvals

Part 7.1 Outline and important concepts

141 Outline—ch 7

- (1) This chapter sets out the following:
 - (a) the main types of development;
 - (b) requirements for development approval;
 - (c) the development approval process.
- (2) The main types of development are as follows:
 - (a) *assessable development* needs development approval and includes significant development under chapter 6;
 - (b) *prohibited development* is unlawful unless development approval is allowed under division 7.3.1;
 - (c) *exempt development* does not need development approval.
- (3) This section is intended only as a guide to readers.

142 Meaning of *decision-maker*—ch 7

In this chapter:

decision-maker—

- (a) for a development application, means—
 - (i) if the application is for the removal of the concessional status of a lease or for a territory priority project—the Minister; and
 - (ii) in any other case—the territory planning authority; and

- 1 (b) for a development approval, means—
- 2 (i) if the approval is for the removal of the concessional status
- 3 of a lease or for a territory priority project—the Minister;
- 4 and
- 5 (ii) if the territory planning authority decided the application
- 6 for the approval under section 182—the authority.

Part 7.2 Exempt development

Division 7.2.1 Preliminary

143 Meaning of *exempt development*

(1) In this Act:

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

- (a) section 145 (Exempt development—authorised use); or
- (b) a regulation.

Note The territory planning authority may tell a proponent of a development proposal whether the development is likely to be exempt if asked by the proponent (see s 162 and s 163). A person may apply for an exemption assessment to work out whether a development is an exempt development (see s 149).

(2) For the definition of *exempt development*, paragraph (b), a regulation may not exempt any of the following from requiring development approval:

- (a) a significant development;
- (b) a development that is inconsistent with an essential design element identified in a development approval.

Note *Essential design element*, of a development proposal—see s 185.

144 Meaning of *authorised use*—pt 7.2

In this part:

authorised use, of land, or of a building or other structure on land—

(a) means a use authorised by any of the following:

- (i) a lease;
- (ii) a licence under this Act;

- 1 (iii) a public unleased land permit under the *Public Unleased*
2 *Land Act 2013*;
- 3 (iv) a sign approval or work approval under the *Public*
4 *Unleased Land Act 2013*;
- 5 (v) a preserved lease; and
- 6 (b) includes a use authorised by a lease that expired not more than
7 6 months before the use and is renewed within 6 months after
8 the expiry; but
- 9 (c) does not include a use authorised by section 272 (Use of land for
10 leased purpose).

11 **145 Exempt development—authorised use**

- 12 (1) An authorised use of land, or of a building or other structure on land,
13 is exempt from requiring development approval.
- 14 (2) To remove any doubt, an authorised use of a building or other
15 structure on land is exempt from requiring development approval if
16 the construction of the building or other structure is exempt from
17 requiring development approval.
- 18 (3) To remove any doubt, if an authorised use of land, or of a building or
19 other structure on land, is exempt from requiring development
20 approval under subsection (1), the right to use the land, building or
21 other structure as authorised does not end only because 1 or more of
22 the following apply:
 - 23 (a) the use is not continuous;
 - 24 (b) someone deals with the lease (the *affected lease*) that authorises
25 the use;
 - 26 (c) a further lease is granted for the affected lease on application
27 under section 285 (Grant of further leases), whether or not the
28 grant happens immediately after the expiry of the affected lease.
- 29 (4) This section is subject to section 146.

146 Authorised use that is not exempt

(1) An authorised use of land, or of a building or other structure on land, requires development approval if—

(a) earthworks or other construction work is undertaken on the land; and

(b) the work requires development approval.

(2) Also, an authorised use of land, or of a building or other structure on land, requires development approval if—

(a) a building or other structure is constructed on the land, or a building or other structure on the land is altered or demolished; and

(b) the construction, alteration or demolition requires development approval.

(3) Also, an authorised use of land, or of a building or other structure on land, requires development approval if—

(a) the placard quantity or more of a Schedule 11 hazardous chemical is to be stored on the land or in the building or other structure; and

(b) the land, building or other structure is not mentioned in the *Planning and Development (Placard Quantity Premises) List 2018* (NI2018-532) (repealed).

(4) In this section:

placard quantity—see the *Work Health and Safety Regulation 2011*, dictionary.

Schedule 11 hazardous chemical—see the *Work Health and Safety Regulation 2011*, dictionary.

Note Because the use of land, or of a building or other structure on land, is development (see s 14 (1)), if the use of the land, building or other structure stops being exempt under this section, development approval will be required for the use.

147 Effect of s 146 on development approval

(1) This section applies if—

- (a) there is a development proposal in relation to land; and
- (b) undertaking the proposal would result in an authorised use of the land, or of a building or other structure on the land, requiring development approval because of section 146.

(2) The proponent of the proposal must apply for development approval for—

- (a) the proposal; and
- (b) any authorised use of the land, or of a building or other structure on the land, that is intended to continue to apply after the proposal is undertaken (the *proposed use*).

(3) In deciding the development application, the decision-maker—

- (a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use, the application would be refused; and
- (b) must not approve the application on a condition only because, if the application were an application only for the proposed use, the application would be approved on the condition.

Example

Maria is the lessee of land for which the authorised uses are retail and commercial and on which there are office buildings and shops. Maria wants to undertake earthworks to clear an area of vegetation for people to park on the land, which will require development approval. If the earthworks were undertaken, the authorised uses of the land would stop being exempt under s 146.

In addition to applying for development approval to undertake the earthworks, Maria must also apply for development approval to use the land for retail and commercial purposes.

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

Division 7.2.2 Exempt development and approvals

148 Exempt development—no need for approval

An exempt development may be undertaken without any of the following:

- (a) a development application;
- (b) a development approval;
- (c) an exemption assessment.

Note The proposal for the exempt development may still need a building approval under the [Building Act 2004](#).

Division 7.2.3 Exemption assessments

149 Application for exemption assessment

- (1) A person may apply to a works assessor or building surveyor (the ***exemption assessor***) for an assessment of whether a development is an exempt development (an ***exemption assessment***).

Note Applying for an exemption assessment is not a requirement of the development approval or building approval process (see s 148 and [Building Act 2004](#), s 14A). If a person believes that a development is an exempt development, the person need not apply for an exemption assessment from a works assessor or building surveyor.

- (2) An application must be—
- (a) in writing submitted by the applicant; and
 - (b) approved in writing by any other prescribed person; and
 - (c) accompanied by information, plans and other documents prescribed by regulation.
- (3) The application may relate to development that is to be undertaken or has been undertaken.

- 1 (4) In this section:
- 2 *building surveyor*—see the *Construction Occupations (Licensing)*
- 3 *Act 2004*, section 9.
- 4 *works assessor*—see the *Construction Occupations (Licensing)*
- 5 *Act 2004*, section 14A.
- 6 **150 Exemption assessment and notice**
- 7 (1) This section applies if—
- 8 (a) a person applies to an exemption assessor for an exemption
- 9 assessment under section 149; and
- 10 (b) the exemption assessor agrees to do the exemption assessment.
- 11 (2) The exemption assessor must—
- 12 (a) assess the application; and
- 13 (b) give the applicant a notice (an *exemption assessment D*
- 14 *notice*)—
- 15 (i) stating whether the development is, in the assessor's
- 16 opinion, an exempt development; and
- 17 (ii) including anything else prescribed by regulation.
- 18 (3) The exemption assessor must give a copy of the exemption
- 19 assessment D notice to the territory planning authority within 5 days
- 20 after the day the notice is given to the applicant.
- 21 (4) The exemption assessor may, in assessing the application, request
- 22 more information from the applicant.
- 23 (5) If the applicant does not provide the requested information, the
- 24 exemption assessor need not assess the application or give the
- 25 exemption assessment D notice.
- 26 (6) The exemption assessor may charge a fee for giving the exemption
- 27 assessment D notice.

- 1 **151 Effect of exemption assessment D notice**
- 2 (1) An exemption assessment D notice in relation to a development yet
- 3 to be undertaken certifies that the development is, or is not, an exempt
- 4 development.
- 5 (2) An exemption assessment D notice in relation to a development that
- 6 has been undertaken certifies that the development is, or is not,
- 7 exempt from requiring development approval based on whether the
- 8 development—
- 9 (a) was exempt from requiring development approval at the time it
- 10 was done; or
- 11 (b) is currently exempt from requiring development approval.

Part 7.3 Prohibited development

Division 7.3.1 Applications for prohibited development—general

152 Meaning of *prohibited development*

- (1) For this Act, a development is a *prohibited development* if either of the following applies to the development or a part of the development:
- (a) the development is prohibited under the territory plan;
 - (b) for a development that is in a future urban area—
 - (i) the development is undertaken by an entity other than the Territory or a territory authority; and
 - (ii) the territory plan states that the development is not prohibited.
- (2) However, if a development is an exempt development and a prohibited development, the development is taken not to be a prohibited development.

153 Development applications prohibited except in stated circumstances

The territory planning authority must not accept a development application for approval of a prohibited development other than under 1 of the following sections:

- (a) section 154 (Applications for development approval in relation to use for otherwise prohibited development);
- (b) section 155 (Applications in anticipation of major plan amendment);
- (c) section 157 (Applications for development encroaching on adjoining land if development prohibited).

154 Applications for development approval in relation to use for otherwise prohibited development

(1) This section applies to a development proposal in relation to a use of land, or of a building or other structure on land, if the use is—

(a) an authorised use to which section 146 (Authorised use that is not exempt) applies; and

(b) a prohibited development.

Note Because the use is not an exempt development, s 152 (2) does not apply.

(2) A person may apply to the territory planning authority for development approval of the development proposal.

(3) If an application is made under subsection (2), the use is taken not to be a prohibited development.

(4) In this section:

authorised use, of land, or of a building or other structure on land—

(a) means a use authorised by—

(i) a lease; or

(ii) section 272 (Use of land for leased purposes); or

(iii) a preserved lease; and

(b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

Example

Lisa is the lessee of land on which she operates a service station in accordance with the lease. The territory plan is amended and it now prohibits using land to operate service stations in her area. Lisa is not affected since her existing use of the land as authorised by the lease is a type of exempt development and taken not to be prohibited (see s 145 and s 152).

1 However, Lisa has plans to demolish and rebuild the service station. If she does
2 this, her use of the land is no longer exempt (see s 146). Subsection (2) allows Lisa
3 to apply for development approval for the development proposal and s (3) provides
4 that the use is taken not to be prohibited development.

5 **155 Applications in anticipation of major plan amendment**

- 6 (1) This section applies if the territory planning authority has—
- 7 (a) prepared a draft major plan amendment in accordance with
8 section 58; and
- 9 (b) given the draft major plan amendment to the Minister for
10 approval under section 65.
- 11 (2) A person may apply for approval of a relevant development proposal
12 after the day the draft amendment is given to the Minister as if the
13 draft amendment were in force.
- 14 (3) The development application must—
- 15 (a) identify the draft amendment; and
- 16 (b) state that the application is made as if the draft amendment were
17 in force.
- 18 (4) Despite section 50 (Effect of territory plan)—
- 19 (a) chapter 6 (Significant development), this chapter and chapter 10
20 (Leases and licences) apply to the development application as if
21 the draft amendment were in force; and
- 22 (b) the territory planning authority must assess the application as if
23 the draft amendment were in force; and
- 24 (c) the territory planning authority must, in publicly notifying the
25 development application under division 7.5.4 (Public
26 notification of development applications)—
- 27 (i) identify the draft amendment; and
- 28 (ii) state that the application is made in accordance with the
29 draft amendment.

(5) In this section:

relevant development proposal, in relation to a draft major plan amendment, means a development proposal for a prohibited development that would not be prohibited if the draft amendment were in force.

Note A development application made under this section may be decided only if the draft plan amendment has commenced under s 78 or s 79 (see s 182 (2) (a)).

156 Declaration for development encroaching on adjoining land if development prohibited

(1) This section applies to a development proposal in relation to a use of land, or of a building or other structure on land, if—

(a) the land, building or other structure adjoins unleased land or land for which the Territory is the registered proprietor (the ***adjoining land***); and

(b) the use would encroach no further onto, over or under the adjoining land than the distance prescribed by regulation (the ***encroachment***); and

(c) the use is a prohibited development on the adjoining land.

(2) A person may apply to the territory planning authority for a declaration that the development proposal satisfies the following criteria:

(a) the encroachment is a minor part of the development;

(b) undertaking the proposal in relation to the adjoining land would enable a more logical and appropriate development than if there were no encroachment;

(c) the proposed use of the land would—

(i) not detract from the amenity of the surrounding area; and

(ii) promote better land management; and

- 1 (iii) not unreasonably restrict public access to other land;
- 2 (d) the territory planning authority is not prohibited from granting
- 3 by direct sale a lease over the encroachment.
- 4 (3) The application must include—
- 5 (a) if the adjoining land is unleased land—written consent by the
- 6 custodian of the land to the encroachment; and
- 7 (b) a copy of any written information given to the custodian, with
- 8 each page—
- 9 (i) signed by the custodian; and
- 10 (ii) numbered by stating the page number and the total number
- 11 of pages provided.
- 12 (4) Not later than 10 working days after the day the person applies to the
- 13 territory planning authority for a declaration under subsection (2), the
- 14 authority must—
- 15 (a) make the declaration; or
- 16 (b) refuse to make the declaration.
- 17 (5) If the territory planning authority makes the declaration—
- 18 (a) the authority must publish the declaration on the authority's
- 19 website; and
- 20 (b) the applicant must obtain a lease or licence over the land.
- 21 **157 Applications for development encroaching on adjoining**
- 22 **land if development prohibited**
- 23 (1) If the territory planning authority has made a declaration under
- 24 section 156 in relation to a development proposal—
- 25 (a) the applicant for the declaration may apply to the authority for
- 26 development approval of the proposal; and

- 1 (b) the use is taken not to be a prohibited development on the
2 adjoining land.
- 3 (2) Despite section 50 (Effect of territory plan)—
- 4 (a) chapter 6 (Significant development), this chapter and chapter 10
5 (Leases and licences) apply to the application as if the territory
6 plan were amended in accordance with section 86 (Rezoning—
7 development encroaching on adjoining land) to change the
8 boundary of the land consistent with a proposal under
9 section 156; and
- 10 (b) the authority must assess the application as if the territory plan
11 were amended in accordance with section 86.
- 12 *Note 1* A development application made under this section may be decided only
13 if the territory plan has been amended under s 86 (see s 182 (2) (b)).
- 14 *Note 2* The territory planning authority must not grant a lease over an
15 encroachment on adjoining land by direct sale unless the territory plan
16 has been amended under s 86 (see s 262 (1) (i)).
- 17 (3) In this section:
- 18 *adjoining land*—see section 156 (1) (a).
- 19 *encroachment*—see section 156 (1) (b).

20 **Division 7.3.2 Prohibited waste facility development**
21 **applications**

22 **158 Object—div 7.3.2**

23 The object of this division is to contribute to the achievement of the
24 object of this Act by limiting the development of new waste facilities
25 in the division of Fyshwick.

- 1 **159 Certain development applications for waste facilities**
2 **prohibited**
- 3 (1) The territory planning authority must not accept a prohibited waste
4 facility development application.
- 5 (2) In this section:
- 6 *handle*, in relation to waste, means store, sort, treat, process, recover,
7 recycle, use, reuse or dispose of waste.
- 8 *prohibited waste facility development application* means a
9 development application in relation to a development proposal for the
10 use of land in the division of Fyshwick that would, if it were
11 approved, permit—
- 12 (a) the use of any part of the land as a waste facility; or
- 13 (b) if the land is used, wholly or partly, as an existing waste
14 facility—an increase in the amount of waste handled on the land
15 each year.
- 16 *waste*—see the [Waste Management and Resource Recovery](#)
17 [Act 2016](#), section 10.
- 18 *waste facility*—
- 19 (a) means a site used for the handling of waste and includes—
- 20 (i) an incineration facility; and
- 21 (ii) a landfill site; and
- 22 (iii) a recyclable material collection site; and
- 23 (iv) a recycling facility; and
- 24 (v) a waste transfer facility; and
- 25 (vi) a hazardous waste facility; but

(b) does not include—

(i) if the handling of waste on a site is ancillary to the site's primary use—the site; or

(ii) a site prescribed by regulation.

Examples—par (b) (i)

1 a paint supplier that accepts unused paint from its customers

2 an electrical goods retailer that uses large on-site bins for storing cardboard for recycling

160 Compensation—safety net

(1) This section applies if, apart from this section, the operation of this division would result in the acquisition of property from a person otherwise than on just terms under the [Self-Government Act](#), section 23 (1) (a).

Note The Legislative Assembly has no power to make a law in relation to an acquisition otherwise than on just terms (see [Self-Government Act](#), s 23 (1) (a)).

(2) The Territory must pay reasonable compensation to the person for the acquisition in accordance with this section.

(3) The Territory and the person may agree on an amount of compensation or other terms in satisfaction of the Territory's obligation under subsection (2).

(4) If there is no agreement under subsection (3), the person may, by proceeding in a court of competent jurisdiction, recover from the Territory the reasonable compensation that the court decides.

(5) In deciding what is reasonable compensation, the court—

(a) must have regard to any payment made to, or other terms agreed with, the person by or on behalf of the Territory in relation to the acquisition; and

- 1 (b) may have regard to the following:
- 2 (i) any reasonable costs incurred by the person in relation to a
- 3 prohibited waste facility development application;
- 4 (ii) any loss in value of land or buildings on the land related to
- 5 the acquisition;
- 6 (iii) any cost of work lawfully undertaken in developing the
- 7 land for use as a waste facility; but
- 8 (c) must not have regard to any loss of opportunity or future profit
- 9 claimed by the person because of the acquisition.
- 10 (6) In this section:
- 11 *prohibited waste facility development application*—see
- 12 section 159 (2).

1 **Part 7.4** **Development in designated areas**

2 **161** **Development proposal for lease variation in designated**
3 **area**

4 The following provisions do not apply to a development proposal that
5 is a variation of a lease in a designated area:

- 6 (a) section 50 (Effect of territory plan);
7 (b) section 62 (Public consultation—notice of interim effect etc);
8 (c) a provision of this Act that refers to any part of the territory plan.

9 **Example—par (c)**

10 s 186 (1) (a)

Part 7.5 Assessable development

Division 7.5.1 Pre-application matters

162 Consideration of development proposals

- (1) The territory planning authority must consider a development proposal if asked by the proponent of the proposal.
- (2) However, the territory planning authority need not consider the development proposal if satisfied that the information provided by the proponent in relation to the proposal would not allow the authority to provide adequate advice under section 163.
- (3) The territory planning authority must tell the proponent if, because the authority is satisfied under subsection (2), the authority will not consider the development proposal.

163 Advice on development proposals

- (1) After considering a development proposal under section 162, the territory planning authority must tell the proponent, in writing, the following in relation to the proposal:
 - (a) whether the proposed development is likely to be exempt, assessable or prohibited development;
- Note* A person may apply for an exemption assessment to work out whether a development is an exempt development (see s 149).
- (b) whether the authority considers the proposal is for a significant development and, if so, the additional processes (if any) that apply in relation to the proposal;

Examples—additional process

- design review panel advice
- EIS
- environmental significance opinion

- 1 (c) whether the authority considers the proposal will be referred to
2 the conservator of flora and fauna or a referral entity under
3 section 168 (When authority must refer development
4 application);
- 5 (d) whether public notification under division 7.5.3 (Referral of
6 development applications) will be required for the application;
- 7 (e) whether the proposed development is consistent with the
8 existing lease applying to the land the subject of the
9 development;
- 10 (f) if the proposal relates to a variation of a nominal rent lease—
11 (i) whether a lease variation charge is payable under
12 division 10.7.3 (Variation of nominal rent leases) in
13 relation to the variation; and
14 (ii) the process for determining the charge;
- 15 (g) generally, what additional information may be required.
- 16 (2) The territory planning authority's advice on a development proposal
17 is intended to guide and assist the proponent in understanding the
18 likely development assessment process applying to the proposal.
- 19 (3) However, the territory planning authority is not bound by that advice
20 when considering a development application submitted for the
21 development proposal.

22 **Division 7.5.2 Making a development application**

23 **164 Application for development approval**

- 24 (1) The proponent of a development proposal may apply to the territory
25 planning authority for approval to undertake the proposed
26 development (a *development application*).

- 1 (2) A development application must be—
- 2 (a) in writing and signed by the proponent and any prescribed
- 3 person; and
- 4 (b) in the form required by the territory planning authority by notice
- 5 on the authority website; and
- 6 (c) accompanied by the plans, drawings, specifications,
- 7 assessments and other information and documents—
- 8 (i) sufficient to address each provision of the territory plan
- 9 relevant to the proposed development; and
- 10 (ii) showing how the application meets each mandatory
- 11 requirement of a provision of the territory plan; and
- 12 (iii) stating any condition of a previous development approval
- 13 that affects the proposed development; and
- 14 (iv) showing how the proposed development integrates with
- 15 the surrounding leases and other approved developments;
- 16 and
- 17 (v) prescribed for this section; and
- 18 (vi) required by the territory plan or another provision of this
- 19 Act; and
- 20 (d) if the development application is mentioned in an item in
- 21 schedule 2, part 2.2, column 2—accompanied by the
- 22 information or documents mentioned in the item, column 3.
- 23 *Note 1* Other territory laws may provide additional requirements for
- 24 development applications under this Act (see for eg [Unit Titles Act 2001](#),
- 25 s 166).
- 26 *Note 2* Other requirements apply to development applications for subdivision
- 27 development proposals (see s 43).
- 28 *Note 3* Other requirements apply to development applications to vary a
- 29 concessional lease to remove its concessional status (see s 305).

(3) A regulation may exempt a development application from a requirement under this section.

(4) The territory planning authority may make guidelines—

(a) about the preparation of the information and documents mentioned in subsection (2) (c); and

(b) setting out survey information requirements mentioned in schedule 2, part 2.2, item 16.

(5) A guideline is a notifiable instrument.

(6) A guideline must be published on the authority website.

Note A development application may be made for development undertaken without approval (see s 212).

165 Development applications—authority may request more information

(1) The territory planning authority may at any time, by written notice, ask an applicant for development approval to give the authority more information in relation to the development application.

(2) The territory planning authority may ask for information under subsection (1) more than once.

(3) The territory planning authority must publish on the authority website—

(a) the notice asking for more information; and

(b) the information given to the authority by the applicant.

(4) The development application is taken to have been withdrawn by the applicant if the applicant does not give the territory planning authority the information within 18 months after the day it asked for the information.

Note A request under this section may affect the time to decide an application (see s 189).

- 1 **166 Amendment of development application**
- 2 (1) The territory planning authority may, if asked by an applicant for
- 3 development approval, amend the development application.
- 4 (2) However, the territory planning authority must not amend the
- 5 development application unless—
- 6 (a) the request for amendment is signed by the applicant and any
- 7 person prescribed for section 164 (2) (a); and
- 8 (b) the authority is satisfied that the proposed amended
- 9 application—
- 10 (i) is substantially the same as the original application; and
- 11 (ii) if the development in the original application was not a
- 12 significant development—does not result in the
- 13 development becoming a significant development; and
- 14 (iii) meets the requirements of section 164 (2) (b) to (d); and
- 15 (c) for land under a land sublease—
- 16 (i) if the applicant is not the sublessee—the sublessee
- 17 consents, in writing, to the amendment; and
- 18 (ii) if the applicant is not the lessee—the lessee consents, in
- 19 writing, to the amendment.
- 20 (3) The applicant must submit the information and documents under
- 21 section 164 (2) (c) sufficient to allow the authority to assess the
- 22 proposed amended application in accordance with subsection (2).
- 23 **Example**
- 24 Sch 2, pt 2.2, item 22 requires certain development applications to be accompanied
- 25 by a written endorsement that the proposal is consistent with a development
- 26 agreement. If the development as amended would no longer be covered by the
- 27 endorsement, the applicant must submit an updated endorsement.

- 1 (4) The territory planning authority must, not later than 5 working days
2 after the day the information and documents mentioned in
3 subsection (3) are accepted—
4 (a) amend the development application; or
5 (b) refuse to amend the development application.
6 (5) The territory planning authority must publish on the authority
7 website—
8 (a) the request for amendment; and
9 (b) the decision made under subsection (4) in response to the
10 request.

11 **167 Correction of development application**

- 12 (1) The territory planning authority may, on the authority's own initiative
13 or on application by the applicant, correct a formal error in a
14 development application.
15 (2) However, the territory planning authority must not make a correction
16 if making the correction would adversely affect someone other than
17 the applicant.
18 (3) If the territory planning authority does not tell the applicant that the
19 authority refuses to correct a development application by not later
20 than 5 working days after the day the applicant asks for the correction,
21 the authority is taken to have refused the correction.
22 (4) If the territory planning authority corrects a development application
23 on the authority's own initiative, the authority must give the applicant
24 written notice of the correction.

Division 7.5.3 Referral of development applications

168 When authority must refer development application

- (1) The territory planning authority must refer a development application as follows:
 - (a) to an entity prescribed by regulation (a *referral entity*);
 - (b) if required by the territory plan—to the entity stated in the territory plan;
 - (c) if the authority is satisfied that a proposed development is likely to have a significant adverse environmental impact on a protected matter—to the conservator of flora and fauna;
 - (d) if the authority is satisfied that a proposed development is likely to have an adverse impact on a matter in which a government entity (other than a referral entity) has an interest, or is relevant to matters over which a government entity (other than a referral entity) has an advisory role—to the government entity.
- (2) However, the territory planning authority need not refer a development application to an entity under subsection (1) if—
 - (a) the authority is satisfied that the applicant has adequately consulted the entity—
 - (i) in relation to the same development proposal as the proposal in the application; and
 - (ii) not earlier than 6 months before the day the application is made; and
 - (b) the entity agrees in writing to the proposed development.
- (3) If the requirements under subsection (2) are met—
 - (a) the application is taken to have been referred to the entity; and

- 1 (b) the agreement mentioned in subsection (2) (b) is taken to be
2 advice received in accordance with section 170 in relation to the
3 development application.

4 **169 Further entity referral—more information or amended**
5 **application**

- 6 (1) This section applies to a development application if—
7 (a) either—
8 (i) the application was referred to an entity under section 168
9 (When authority must refer development application); or
10 (ii) the development proposal in the application was referred
11 to the design review panel for advice under
12 section 99 (Advice of design review panel); and
13 (b) the application (the *changed application*) is changed in 1 or both
14 of the following ways:
15 (i) the territory planning authority receives more information
16 in relation to the application in response to a request under
17 section 165 (Development applications—authority may
18 request more information);
19 (ii) the authority amends the application under
20 section 166 (Amendment of development application).
21 (2) The territory planning authority must—
22 (a) if the application was referred to an entity under section 168—
23 refer the changed application to that entity; and
24 (b) if the application was referred to the design review panel for
25 advice under section 99—refer the changed application to the
26 design review panel.

- 1 (3) The territory planning authority may refer the changed application to
2 an additional entity mentioned in section 168 if the authority
3 considers that the changed application is likely to have an adverse
4 impact on a matter—
- 5 (a) in which the entity has an interest; or
6 (b) in relation to which the entity has an advisory role.
- 7 (4) The territory planning authority need not refer a changed application
8 to an entity under subsection (2) if the authority is satisfied the
9 change—
- 10 (a) does not impact on the part of the application in relation to which
11 the entity made comments; and
12 (b) is unlikely to raise an issue about which the entity may wish to
13 comment.
- 14 (5) If the territory planning authority decides under subsection (4) not to
15 refer a changed application to an entity, the authority must publish the
16 decision and reasons for the decision on the authority website.
- 17 (6) The territory planning authority must include a brief description of
18 the change to the application if the authority refers the changed
19 application to an entity under this section.

20 **170 Entity advice on development applications**

- 21 (1) This section applies if a development application is referred to an
22 entity under section 168 or section 169.
- 23 (2) The entity must give the territory planning authority the entity's
24 advice in relation to the development application within the number
25 of days prescribed by regulation after the day the authority refers the
26 application to the entity.

27 *Note* A written agreement to a development proposal under s 168 (2) (b) is
28 taken to be advice given in accordance with this section in relation to a
29 development application for the proposal (see s 168 (3)).

-
- 1 **171 Effect of approvals or advice in development applications**
- 2 (1) This section applies to an entity if the territory planning authority
- 3 approves a development application and—
- 4 (a) if an approval of a development or certification of a thing is
- 5 required by an entity before the authority can approve the
- 6 development application—the entity gave a written approval or
- 7 certification; or
- 8 (b) if the development application was referred to the entity under
- 9 section 168 or section 169—the approval is substantially
- 10 consistent with the entity’s advice.
- 11 (2) The entity must not act inconsistently with the development approval,
- 12 certification or the advice unless—
- 13 (a) more information in relation to the proposed development
- 14 comes to the entity’s attention (other than information
- 15 mentioned in subsection (3)); and
- 16 (b) the entity did not have the information when the entity approved
- 17 the development, certified the thing or gave the advice; and
- 18 (c) the information is relevant to the approval of, or certification or
- 19 advice in relation to, the development; and
- 20 (d) the entity would not have approved the development, certified
- 21 the thing or given the advice if the entity had the information.
- 22 (3) Subsection (2) (a) does not apply to information in relation to a
- 23 development proposed in an application if the information—
- 24 (a) was not required in the application; and
- 25 (b) is required by the entity after the application is approved; and
- 26 (c) is consistent in all significant respects with information already
- 27 provided by the applicant, except that it is more detailed.
- 28 (4) For this section, an entity ***acts inconsistently*** with a development
- 29 approval, certification or advice if—
-

- 1 (a) the entity has—
2 (i) approved the application or certified the thing; or
3 (ii) given advice that the entity will give an approval or other
4 thing in relation to the development; and
5 (b) the entity—
6 (i) does not give an approval or other thing required for the
7 development; or
8 (ii) gives the approval or other thing in a way, or subject to a
9 condition, that prevents the applicant undertaking the
10 development approved.

11 **Example—advice**

12 that the entity will agree to the digging up of a footpath to allow the development

13 **Example—thing required for development**

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

- 15 (5) Also for this section, an entity *acts inconsistently* with a development
16 approval, certification or advice in relation to a development
17 application if—

- 18 (a) the approval, certification or advice states that an activity to
19 which the approval, certification or advice relates does not
20 require a particular authorisation (however described); and
21 (b) the entity prosecutes someone, or takes other compliance action,
22 in relation to the activity because the activity is undertaken
23 without the particular authorisation.

24 **Example—acting inconsistently**

25 An Act prohibits activity A without an approval. The entity responsible for
26 administering the Act gives advice under s 170 that the activity (activity B) in the
27 application does not fall within the description of activity A. The application is
28 approved consistent with the advice. The entity cannot prosecute a person for
29 undertaking activity B in accordance with the approved application because activity
30 B does fall within the description of activity A and the person did not have approval.

Division 7.5.4 Public notification of development applications

172 Definitions—div 7.5.4

In this division:

adjoins—land *adjoins* other land if the land touches the other land, or is separated from the other land only by a road, reserve, river, watercourse or similar division.

registered interest holder, in relation to a lease, means each person with a registered interest in the land described in the lease, other than the applicant for a development application relating to the land.

173 Authority must publicly notify development applications

(1) The territory planning authority must *publicly notify* a development application by—

- (a) giving public notice of the making of the application on the authority website; and
- (b) if section 174 applies—giving notice in accordance with that section; and
- (c) if section 175 applies—giving notice in accordance with that section; and
- (d) displaying a sign on the land to which the application relates stating the development proposed to be undertaken.

(2) A development application must be notified for the period (the *public notification period*)—

- (a) prescribed by regulation; or
- (b) if the period prescribed is extended under section 177 (3)—the prescribed period as extended.

- 1 (3) A regulation may prescribe development applications that are exempt
2 from—
- 3 (a) giving notice under section 174; or
- 4 (b) displaying a sign on the land under subsection (1) (d).
- 5 **174 Notice of development applications—adjoining land**
- 6 (1) This section applies in relation to a development application if leased
7 land (the *adjoining land*) adjoins the land to which the application
8 relates.
- 9 (2) The territory planning authority must do the following:
- 10 (a) if the adjoining land is occupied—give written notice of the
11 making of the development application to the registered
12 proprietor of the lease at the adjoining land;
- 13 (b) if the adjoining land is unoccupied—give written notice of the
14 making of the development application to the lessee of the
15 adjoining land at the lessee’s last-known address.
- 16 (3) The territory planning authority may give written notice of the
17 making of the development application to a lessee of land that is not
18 adjoining land if the authority considers that the land may be affected
19 by the proposed development in a way similar to adjoining land.
- 20 (4) The territory planning authority may make a guideline for
21 subsection (3) about how land may be affected by a proposed
22 development to which a development application relates.
- 23 (5) A guideline is a notifiable instrument.

175 Notice of development applications—lease variations

- (1) This section applies in relation to a development application if the application is, or includes, a lease variation.
- (2) The territory planning authority must give written notice of the application to each person with a registered interest in the land described in the lease (other than the applicant).

176 Further public notification—changed application

- (1) This section applies if—
- (a) a development application is publicly notified (an *initial public notification*); and
- (b) the development application (the *changed development application*) is changed in 1 or both of the following ways:
- (i) the territory planning authority receives more information in relation to the application in response to a request under section 165 (Development applications—authority may request more information);
- (ii) the territory planning authority amends the application under section 166 (Amendment of development application).
- (2) The territory planning authority must—
- (a) publicly notify the changed development application; and
- (b) give written notice of the changed development application to each person who made a representation about the development application during the initial public notification.

Note **Publicly notify** a development application—see s 173 (1).

- 1 (3) However, the territory planning authority need not publicly notify the
2 changed development application if satisfied there will be no, or
3 minimal, increase in—
 - 4 (a) the adverse impact of the development; and
 - 5 (b) the environmental impact of the development.
- 6 (4) Before making a decision under subsection (3), the territory planning
7 authority must consider—
 - 8 (a) the representations (if any) received in response to the initial
9 public notification of the development application; and
 - 10 (b) the cumulative impact of the changes to the development
11 application.
- 12 (5) If the territory planning authority decides not to publicly notify the
13 changed development application, the authority must publish the
14 decision and reasons for the decision on the authority website.

15 Division 7.5.5 Representations about development 16 applications

17 177 Making representations about development applications

- 18 (1) Anyone may make a written representation about a development
19 application that has been publicly notified.
- 20 (2) A representation about a development application must be made
21 during the public notification period for the application.
- 22 *Note* **Public notification period**, for a development application—see s 173 (2).
- 23 (3) The territory planning authority may, by public notice, extend the
24 public notification period.
- 25 (4) If the territory planning authority extends the public notification
26 period, the authority must—
 - 27 (a) give the applicant for the development approval written notice
28 of the extension; and

- 1 (b) publish the decision to extend the public notification period on
2 the authority website.
- 3 (5) A person who makes a representation about a development
4 application may, in writing, withdraw the representation at any time
5 before the application is decided.
- 6 (6) To remove any doubt, a representation about a development
7 application—
- 8 (a) may relate to how the development proposed in the application
9 meets, or does not meet, any finding or recommendation of the
10 EIS for the development; and
- 11 (b) must not relate to the adequacy of a finalised EIS.
- 12 *Note* Representations about a draft EIS may be made under s 113.

13 **Division 7.5.6 Notice of development applications to**
14 **registrar-general**

15 **178 Notice of development applications**

- 16 (1) The territory planning authority must give written notice of each
17 development application submitted to the authority to the
18 registrar-general for recording under the *Land Titles Act 1925*,
19 part 8A (Record of administrative interests).
- 20 (2) The notice must include the following:
- 21 (a) a description of the development;
- 22 (b) the number allocated to the development application by the
23 territory planning authority;
- 24 (c) the approval status of the application;
- 25 **Examples—approval status**
- 26 • approved
- 27 • approved on conditions
- 28 • pending

- 1 • refused
- 2 • under review by the ACAT
- 3 (d) anything else prescribed by regulation.
- 4 (3) If the approval status of a development application changes, the
- 5 territory planning authority must give the registrar-general written
- 6 notice of the change.

7 **Division 7.5.7 Pre-decision advice**

8 **179 Authority may give advice**

- 9 (1) The territory planning authority may, at any time before deciding a
- 10 development application under section 182, give the applicant for the
- 11 development application advice (*pre-decision advice*) that, in the
- 12 authority's opinion, the application in its current form does not meet
- 13 the requirements of the territory plan.
- 14 (2) The territory planning authority may give pre-decision advice more
- 15 than once.
- 16 (3) The territory planning authority may include advisory notes for the
- 17 applicant about recommended changes to the application to meet the
- 18 requirements of the territory plan.
- 19 (4) The applicant may respond to the pre-decision advice by—
- 20 (a) amending the development application; or
- 21 (b) requesting that the territory planning authority decide the
- 22 application in its current form under section 182.
- 23 *Note* A response in accordance with s (4) (b) may affect the time to decide an
- 24 application (see s 189).
- 25 (5) Pre-decision advice must be published on the authority website.

**Division 7.5.8 Development applications—
 termination**

180 Withdrawal of development applications

An applicant may withdraw a development application at any time before the application is decided under section 182 (Deciding development applications).

181 Refusal, rejection or withdrawal of concurrent documents

(1) This section applies if—

(a) a development application is a concurrent development application; and

(b) a concurrent document, or a provision of a concurrent document, relating to the application—

(i) is refused, rejected or withdrawn; or

(ii) is taken to have been refused, rejected or withdrawn; or

(iii) for a draft major plan amendment—is revised in a way that no longer permits the proposed development.

(2) The territory planning authority is taken to have refused the concurrent development application.

(3) The territory planning authority must give the applicant for the concurrent development application written notice of the effect of this section.

(4) In this section:

concurrent document, in relation to a concurrent development application, means—

- 1 (a) if the application is made under section 155 (Applications in
2 anticipation of major plan amendment)—the draft major plan
3 amendment that gives effect to the anticipated plan amendment;
4 or
- 5 (b) if the application is made under section 157 (Applications for
6 development encroaching on adjoining land if development
7 prohibited)—the proposed technical amendment.

Part 7.6 Development approval

Division 7.6.1 Deciding development applications

182 Deciding development applications

- (1) The decision-maker for a development application must—
- (a) approve a development application; or
 - (b) approve a development application subject to a condition under section 184; or
 - (c) refuse a development application.

Note 1 A development application to vary a lease granted as a concessional lease by surrender and regrant of the lease as a market value lease is subject to a condition (see s 304).

Note 2 In some cases a condition may be required (see s 184 (1)).

- (2) However, the decision-maker may decide a concurrent development application only if—
- (a) for an application made under section 155 (Applications in anticipation of major plan amendment)—the draft major plan amendment has commenced under division 5.2.8 (Commencement and publication of major plan amendments); and
 - (b) for an application made under section 157 (Applications for development encroaching on adjoining land if development prohibited)—the minor plan amendment has commenced under section 83 (4).
- (3) A development application for a territory priority project must be decided by the Minister.

- 1 (4) Before the Minister decides a development application for a territory
2 priority project, the territory planning authority must give the
3 Minister information about whether, in its opinion, the proposal meets
4 the requirements of this Act and the territory plan.
- 5 (5) If the territory planning authority approves a development application
6 that relates to a regulated tree, the authority may, under this section—
- 7 (a) if a tree management plan is already in force for the tree—
8 approve an amendment of, or replacement for, the tree
9 management plan; or
- 10 (b) in any other case—approve a tree management plan for the tree.
- 11 (6) In this section:
- 12 *approve* a development application includes partly approving the
13 application.
- 14 *tree management plan*—see the *Tree Protection Act 2005*,
15 dictionary.

16 **183 Considerations when deciding development applications**

- 17 In deciding a development application under section 182, the
18 decision-maker must consider the following:
- 19 (a) any applicable desired outcomes in the territory plan;
- 20 (b) if the territory planning authority gave pre-decision advice in
21 relation to the application—the pre-decision advice and any
22 response by the applicant to that advice;
- 23 (c) if the site of the proposed development adjoins another zone—
24 whether the development proposal achieves an appropriate
25 transition between the zones;
- 26 (d) the suitability of the proposed development in the context of the
27 site and the site surrounds, including the permissible uses for
28 those areas;

- 1 (e) the probable impact of the proposed development, including the
- 2 nature, extent and significance of probable environmental
- 3 impacts;
- 4 (f) the interaction of the proposed development with any other
- 5 adjoining or adjacent development proposals for which a
- 6 development application has been submitted or development
- 7 approval given;
- 8 (g) any representation about the development application received
- 9 by the territory planning authority and not withdrawn;
- 10 (h) any advice given by an entity to which the development
- 11 application was referred under section 168 (When authority
- 12 must refer development application) or section 169 (Further
- 13 entity referral—more information or amended application);
- 14 (i) any environmental significance opinion or conditional
- 15 environmental significance opinion in relation to the
- 16 development proposal;
- 17 (j) if the proposed development relates to land that is public land—
- 18 the public land management plan for the land;
- 19 (k) if the design review panel gave advice on the development
- 20 proposal—the panel’s advice and the applicant’s response to the
- 21 panel’s advice.

22 **184 Conditional approvals**

- 23 (1) An approval under section 182 (1)—
- 24 (a) must include any condition required to be included by the
- 25 territory plan; and
- 26 (b) must not include a condition inconsistent with a condition
- 27 required to be included by the territory plan; and

- 1 (c) if the development application is for the subdivision of a units
 2 plan under the *Unit Titles Act 2001*, section 165B (Subdivision
 3 of units plan—application)—must include a condition that the
 4 units plan is cancelled; and
- 5 (d) if a conditional environmental significance opinion has been
 6 given in relation to the development—must include a condition
 7 that the development comply with the condition in the
 8 environmental significance opinion; and
- 9 *Note* An application to amend a development approval must be refused
 10 if the changed development proposal would be in breach of the
 11 condition relating to the conditional environmental significance
 12 opinion (see s 203 (2) (a)).
- 13 (e) if the application is for approval of a development on subleased
 14 land—
- 15 (i) may include a condition that the sublessee develops
 16 unleased land in a stated way; and
- 17 (ii) must not include a condition inconsistent with the lease
 18 under which the sublease is granted.
- 19 (2) The following are examples of the conditions subject to which
 20 development approval in relation to land may be given:
- 21 (a) the development, or a stated stage of the development, must be
 22 undertaken to the satisfaction of a stated entity;
- 23 (b) the development, or a stated stage of the development, must be
 24 undertaken within a period stated in or under the approval;
- 25 (c) the approval does not take effect unless a stated approval is
 26 revoked, amended or given;
- 27 (d) a lease relating to the land must be varied and the variation
 28 registered under the *Land Titles Act 1925*;
- 29 (e) an existing licence must be varied;
- 30 (f) another approval relating to the land must be surrendered;

- 1 (g) stated things must be done to prevent or minimise adverse
2 environmental impacts;
- 3 (h) an offset condition;
- 4 (i) for an approval relating to use of the land, or of a building or
5 other structure on the land—the use may take place only in
6 stated circumstances or at stated times;
- 7 (j) for an approval to undertake a development for a stated period—
 - 8 (i) building works or other works undertaken in or on a place
9 the subject of the approval must be removed at the end of
10 the period; or
 - 11 (ii) that the site where the development is to take place is to be
12 restored to a particular state at the end of the period;
- 13 (k) a bond must be entered into securing performance against the
14 conditions of the approval;
- 15 (l) for an approval in relation to a place registered, or nominated for
16 provisional registration, under the *Heritage Act 2004*—the
17 applicant must enter into a heritage agreement under that Act for
18 the conservation of the heritage significance of the place;
- 19 (m) the development must be undertaken to a stated standard;
- 20 (n) stated works, services or facilities that the relevant authority
21 considers reasonable in the circumstances—
 - 22 (i) must be provided by the applicant on or to a place the
23 subject of the approval, or on or to another place; or
 - 24 (ii) must be paid for completely or partly by the applicant; or
 - 25 (iii) must be provided on or to a place the subject of the
26 approval by agreement between the applicant and the
27 Minister responsible for the provision of the works,
28 services or facilities;

- 1 (o) a plan, drawing, specification or other document must be
2 prepared by the applicant and submitted to the territory planning
3 authority for endorsement before the development, or a stated
4 stage of it, starts;
- 5 (p) a change must be made to a plan, drawing, specification or other
6 document forming part of the application for approval.
- 7 (3) A condition may modify the proposed development to make it
8 consistent with the territory plan.
- 9 (4) The territory planning authority may endorse a change to a document
10 previously endorsed in accordance with a condition mentioned in
11 subsection (2) (o) if the change—
- 12 (a) would not make the approval inconsistent with table 207 (When
13 development approvals take effect), item 4; and
- 14 (b) is consistent with the approval, including any conditions of the
15 approval.
- 16 (5) If the change required by a condition mentioned in subsection (2) (o)
17 is minor in nature, the condition may be annotated on the document
18 and attached to the approval.

19 **185 Essential design elements**

- 20 (1) A decision-maker, or the ACAT, may decide that an element of a
21 development proposal is an *essential design element*.
- 22 (2) An essential design element—
- 23 (a) must be identified in a development approval; and
- 24 (b) may be marked on a plan.

186 Restrictions on development approval

(1) A decision-maker may approve a development application for a development proposal only if the proposal is consistent with the following:

- (a) the relevant provisions in the territory plan;
- (b) for development relating to land described in a rural lease—any land management agreement for the land;
- (c) for development in relation to which an entity has given advice under section 170—the entity’s advice;

Note Advice given outside the time required by s 170 is not entity advice for the purpose of that section, but may be considered under s 183 (h).

- (d) for development that will affect a registered tree or declared site—the advice of the conservator of flora and fauna in relation to the application;
- (e) for development that is likely to have a significant adverse environmental impact on a matter protected by the Commonwealth—any advice given by the Commonwealth Minister under section 188 in relation to the matter.

Note A development application cannot be approved if it is inconsistent with the territory plan (see s 50) or the National Capital Plan (see [Australian Capital Territory \(Planning and Land Management\) Act 1988](#) (Cwlth), s 11).

(2) Subsection (1) (c) and (d) are subject to section 187 (Development approval contrary to entity advice).

(3) If an entity mentioned in subsection (1) (c) suggests conditions for the approval in its advice, the suggested conditions are not entity advice for the purpose of this section.

- 1 (4) Also, if an entity mentioned in subsection (1) (c) fails to give advice
2 within the time prescribed for section 170—
 - 3 (a) the decision-maker may approve the development application
4 despite or without the advice; and
 - 5 (b) the validity of the development approval is not affected by the
6 entity's failure.
- 7 (5) The decision-maker must refuse the following development
8 applications:
 - 9 (a) an application for a development proposal involving affected
10 residential premises other than a remediation development;
 - 11 (b) an application for a development proposal mentioned in
12 section 103 (When EIS is required) if the finalised EIS or
13 environmental significance opinion is not provided.
- 14 (6) The decision-maker may refuse the following development
15 applications:
 - 16 (a) an application in which, or in relation to which, the applicant has
17 provided false or misleading information;
18 *Note* It is an offence to make a false or misleading statement, give false
19 or misleading information or produce a false or misleading
20 document (see [Criminal Code](#), pt 3.4).
 - 21 (b) an application if the design review panel has given design advice
22 in relation to the development proposal under section 99 and—
 - 23 (i) the proponent has not responded to the design advice; or
 - 24 (ii) the decision-maker considers the proponent's response to
25 the design advice unsatisfactory.
- 26 (7) In this section:
27 **affected building**—see the [Dangerous Substances Act 2004](#),
28 section 47I.

affected residential premises—see the *Dangerous Substances Act 2004*, section 47I.

development proposal includes a development proposal as amended in accordance with any conditions of approval.

remediation development, in relation to affected residential premises, means—

- (a) the demolition of each affected building on the premises including asbestos removal related to the demolition; and
- (b) the remediation of the premises.

187 Development approval contrary to entity advice

(1) A decision-maker may approve a development application if—

- (a) the application is for—
 - (i) a development proposal that is inconsistent with entity advice mentioned in section 186 (1) (c); or
 - (ii) a territory priority project that is inconsistent with the advice of the conservator of flora and fauna mentioned in section 186 (1) (d); and
- (b) the proposal or project does not involve a protected matter; and
- (c) the decision-maker has considered both of the following:
 - (i) the desired outcomes applying to the proposal under the territory plan;
 - (ii) for a proposal or project requiring an EIS—any reasonable alternative development options; and
- (d) the decision-maker is satisfied that acting contrary to the advice will significantly improve the planning outcome to be achieved.

Note The decision-maker for an application for a territory priority project is the Minister (see s 142).

- 1 (2) Also, the chief planner or the Minister may approve a development
2 application if—
- 3 (a) the application is for a significant development that is likely to
4 have a significant adverse environmental impact on a declared
5 protected matter; and
- 6 (b) the proposal is inconsistent with the advice of the conservator of
7 flora and fauna mentioned in section 186 (1) (c) in relation to
8 the protected matter; and
- 9 (c) the chief planner or Minister is satisfied that the proposal—
- 10 (i) is consistent with the offsets policy; and
- 11 (ii) would provide a substantial public benefit.

12 *Note* The chief planner or Minister's approval must be consistent with
13 approvals required under the [EPBC Act](#).

- 14 (3) In this section:
- 15 *development proposal*—see section 186 (7).

16 **188 Referral of matter protected by the Commonwealth**

- 17 (1) This section applies if—
- 18 (a) a decision-maker proposes under section 182 to approve a
19 development application (with or without a condition); and
- 20 (b) the proposed development is likely to have a significant adverse
21 environmental impact on a matter protected by the
22 Commonwealth.
- 23 (2) Before the decision-maker may approve the application, the
24 decision-maker must refer the proposed decision to the
25 Commonwealth Minister responsible for administering the [EPBC](#)
26 [Act](#).

- (3) If the Commonwealth Minister does not give the decision-maker advice about the proposed decision within 10 working days after the day the decision-maker gives the application to the Commonwealth Minister, the decision-maker may approve the application.

Note If the Commonwealth Minister gives the decision-maker advice about the proposed approval, development approval must not be given unless the development proposal is consistent with the advice (see s 186 (1) (e)).

189 Time to decide development applications

- (1) The maximum time for deciding, under section 182, a development application mentioned in an item in table 189, is the number of working days mentioned in column 3 of the item, starting on the day mentioned in column 4 of the item.
- (2) If the territory planning authority asks for more information in relation to a development application under section 165, the time for deciding the application—
- (a) stops on the day the authority asks for the information; and
 - (b) recommences on the day the applicant gives the information.
- (3) If an applicant responds to pre-decision advice in relation to a development application under section 179 (4) (b), the time for deciding the application—
- (a) stops on the day the territory planning authority gives the applicant the advice; and
 - (b) recommences on the day the applicant responds.

Table 189 Maximum number of days to decide development application

column 1 item	column 2 type of application	column 3 number of working days for decision	column 4 starting day
1	development application (other than a concurrent application or an application for significant development)— (a) if a representation is made under s 177 (b) if no representation is made under s 177	45 30	the latest of the following days: (a) the day the application is submitted (b) if the application is amended under s 166—the day the application is amended by the authority
2	concurrent development application	10	the latest of the following days: (a) the day the concurrent process is completed (b) the day otherwise applying to the application under this section
3	development application for significant development— (a) if a representation is made under s 177 (b) if no representation is made under s 177	55 40	the latest of the following days: (a) the day the application is submitted (b) if the application is amended under s 166—the day the application is amended by the authority

(4) In this section:

day the concurrent process is completed, in relation to a concurrent development application, means—

(a) for an application made under section 155 (Applications in anticipation of major plan amendment)—the day the draft major plan amendment commences under division 5.2.8 (Commencement and publication of major plan amendments); or

(b) for an application made under section 157 (Applications for development encroaching on adjoining land if development prohibited)—the day the minor plan amendment commences under section 83.

working day, for a development application mentioned in table 189, item 1 or 3, means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday in the ACT; or

(c) a day in the period beginning on 20 December in a year and ending on 10 January the following year.

190 Development applications not decided within time

(1) This section applies if—

(a) the time for deciding a development application has ended; and

(b) the decision-maker has not decided the application under section 182.

(2) The decision-maker may approve the application under section 182 (with or without conditions) even if the time for deciding the application has ended.

- 1 (3) To remove any doubt, the decision-maker is taken to have decided to
2 refuse an application under the *ACT Civil and Administrative*
3 *Tribunal Act 2008*, section 12 (When no action taken to be decision)
4 if the decision-maker has not decided the application under
5 section 182.

6 *Note* Because a decision of the ACAT on review is taken to have been a
7 decision of the original decision-maker, the original decision-maker will
8 not be able to approve an application if the ACAT has decided an
9 application for review of the deemed refusal (see *ACT Civil and*
10 *Administrative Tribunal Act 2008*, s 69).

11 **191 Lease to be varied to give effect to development approval**

- 12 (1) This section applies if—
13 (a) a decision-maker approves a development application under
14 section 182; and
15 (b) the development consists of or includes a lease variation (other
16 than the variation of a concessional lease to remove its
17 concessional status).
18 (2) The territory planning authority must vary the lease in accordance
19 with the terms of the approval.
20 (3) This section is subject to part 10.7 (Lease variations).

21 *Note* Table 207, item 4 and item 5 set out when development approvals
22 requiring lease variations take effect.

23 **192 Refusal does not affect existing use**

24 The refusal of a development application in relation to the use of land
25 does not affect an existing use of land, or use of existing
26 developments on the land.

Division 7.6.2 Notice of decisions on development applications

193 Notice of decision

- (1) A decision-maker who decides a development application under section 182 (other than an application to remove the concessional status of a lease) must give written notice of the decision (the *decision notice*) to—
- (a) the applicant; and
 - (b) each person who made a representation under section 177 about the application; and
 - (c) each entity to whom the application was referred under section 168 (When authority must refer development application) or section 169 (Further entity referral—more information or amended application); and
 - (d) if the decision is to approve the application under section 182 (1) (a) or (b)—the registrar-general.
- (2) A decision notice given to a person mentioned in subsection (1) (a) or (b) must include the following:
- (a) a brief description of the place to which the approval relates;
 - (b) a description of the development to which the approval relates;
 - (c) the reasons for the decision;
 - (d) a summary of any advice in relation to the application received from an entity (the *entity's advice*) under section 170 (Entity advice on development applications);
 - (e) if the decision-maker did not follow the entity's advice in making the decision—the reasons for not following the advice;

- 1 (f) if a development application decision was referred to the
2 Commonwealth Minister responsible for administering the
3 [EPBC Act](#)—a summary of the Commonwealth Minister’s
4 advice (if any);
 - 5 (g) a statement about whether the development application is for a
6 significant development or a territory priority project;
 - 7 (h) the date the development application was submitted;
 - 8 (i) the date the development application was decided;
 - 9 (j) a statement about whether the development application was—
10 (i) approved; or
11 (ii) approved in part; or
12 (iii) refused;
 - 13 (k) if any part of the application was approved—
14 (i) a statement about whether the approval is subject to
15 conditions and, if so, what the conditions are; and
16 (ii) the date the approval takes effect; and
17 (iii) any essential design elements for the approval; and
18 (iv) a summary of any essential design elements marked on a
19 plan for the approval;
 - 20 (l) anything else prescribed by regulation.
- 21 *Note* If the notice is given to a person who may apply to the ACAT for review
22 of the decision to which it relates, the notice must be a reviewable
23 decision notice (see s 501).
- 24 (3) If a representation in relation to the development application has been
25 made on behalf of 2 or more people (a **joint representation**) and
26 1 person is nominated as the contact person for the representation (the
27 **nominated person**), it is sufficient for subsection (1) (b) if the
28 decision-maker gives the decision notice to the nominated person.

(4) A decision notice given to the nominated person is taken to be given to each person on behalf of whom the joint representation was made.

(5) A decision notice must be published on the authority website.

Division 7.6.3 Reconsideration of decisions on development applications

194 Definitions—div 7.6.3

In this division:

original application—see section 195 (1) (a).

original decision—see section 195 (1) (a).

reconsideration application—see section 195 (2).

195 Applications for reconsideration

(1) This section applies if—

(a) a development application, or an application for amendment of a development approval (the *original application*), is conditionally approved (including partly approved) or refused by the territory planning authority (the *original decision*); and

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

(c) an application has not been made to the ACAT for review of the original decision.

Note This section does not apply to a development application, or an application for amendment of a development approval, decided by the Minister.

(2) The applicant for the original application may apply for reconsideration of the original decision (the *reconsideration application*).

- 1 (3) The reconsideration application must—
2 (a) be in writing signed by the applicant; and
3 (b) if the application is made by someone other than the lessee of
4 the land to which the application relates and the land is not
5 unleased—also be signed by the lessee of the land.
- 6 (4) The reconsideration application must be made not later than—
7 (a) 20 working days after the day the applicant is told about the
8 original decision by the territory planning authority; or
9 (b) any longer period allowed by the territory planning authority.
- 10 (5) The reconsideration application must set out the grounds on which
11 reconsideration of the original decision is sought.
- 12 (6) A reconsideration application must be published on the authority
13 website.

14 **196 Reconsideration**

- 15 (1) If the territory planning authority receives a reconsideration
16 application, the authority must—
17 (a) reconsider the original decision; and
18 (b) not later than 20 working days after the day the authority
19 receives the application—
20 (i) make any decision in substitution for the original decision
21 that the authority could have made on the original
22 application; or
23 (ii) confirm the original decision.
- 24 (2) The 20 working days mentioned in subsection (1) may be extended
25 for a stated period by agreement between the territory planning
26 authority and the applicant.

- 1 (3) In reconsidering the original decision, the territory planning
2 authority—
- 3 (a) need not publicly notify the reconsideration application under
4 division 7.5.4; but
- 5 (b) must—
- 6 (i) give written notice of the reconsideration application to
7 anyone who made a representation under section 177 about
8 the original application; and
- 9 (ii) allow the person reasonable time (that is at least 2 weeks)
10 to make a representation on the reconsideration
11 application; and
- 12 (iii) consider any representation made within the time allowed.
- 13 *Note* Applications for reconsideration must be published on the authority
14 website (see s 195 (6)).
- 15 (4) Also, in reconsidering the original decision, the territory planning
16 authority—
- 17 (a) must consider any information available to the authority when it
18 made the original decision and information given in the
19 reconsideration application; and
- 20 (b) may consider any other relevant information.
- 21 **Example—other relevant information**
22 information from representations
- 23 (5) If the original decision was made on the territory planning authority's
24 behalf, the authority or someone holding a position senior to the
25 position held by the person who made the original decision must
26 reconsider the decision.

- 1 **197 Effect of ACAT application on reconsideration**
- 2 (1) This section applies if, after a reconsideration application is made, an
- 3 application is made to the ACAT for review of the original decision.
- 4 (2) If the application to the ACAT is made by a third party, the
- 5 reconsideration application is taken to be withdrawn.
- 6 (3) However, if the ACAT makes an order dismissing or striking out the
- 7 application to the ACAT, the applicant for the reconsideration
- 8 application may make another reconsideration application not later
- 9 than 20 working days after the day the order takes effect.
- 10 (4) In this section:
- 11 *third party* means an entity other than the applicant for the
- 12 development approval or the territory planning authority.
- 13 **198 Notice of decisions on reconsideration**
- 14 As soon as practicable after reconsidering an original decision under
- 15 section 196, the territory planning authority must give written notice
- 16 of the decision on the reconsideration to—
- 17 (a) the applicant; and
- 18 (b) anyone who was given notice of the reconsideration application
- 19 under section 196 (3) (b); and
- 20 (c) if the original decision was an approval subject to conditions—
- 21 the registrar-general.
- 22 *Note* If the notice is given to a person who may apply to the ACAT for review
- 23 of the decision to which it relates, the notice must be a reviewable
- 24 decision notice (see s 501).
- 25 **199 No action by authority within time**
- 26 (1) If the territory planning authority does not make a decision within the
- 27 time for deciding the reconsideration application under section 196,
- 28 the authority is taken to have confirmed the original decision.

- 1 (2) However, the territory planning authority may reconsider the original
2 application under section 196 even if the time for deciding the
3 application ends.

4 **Division 7.6.4 Correction and amendment of**
5 **development approvals**

6 **200 Correcting development approvals**

- 7 (1) The territory planning authority may, on its own initiative or on
8 application, correct a formal error in a development approval.
9 (2) If the territory planning authority corrects a development approval,
10 the authority must give every approval-holder written notice about
11 the correction.

12 **201 Revocation of development approvals**

- 13 (1) The territory planning authority may revoke a development
14 approval—
15 (a) if satisfied that the approval was obtained by fraud or
16 misrepresentation; or
17 (b) if the approval is in relation to a place registered or nominated
18 for provisional registration under the *Heritage Act 2004* and the
19 applicant for the approval is convicted of an offence against
20 chapter 13 (Enforcement) or the *Heritage Act 2004*.
21 (2) The territory planning authority must tell the registrar-general about
22 the revocation.

23 **202 Applications to amend development approvals**

- 24 (1) This section applies if—
25 (a) a development proposal changes and is no longer covered by the
26 development approval for the development; and

- 1 (b) section 206 (When development approvals do not require
 2 amendment) does not apply to the changed development
 3 proposal.
- 4 *Note* If the development proposal changes in accordance with a condition on
 5 the development approval, the change is covered by the approval and this
 6 section does not apply.
- 7 (2) The approval-holder may apply to 1 of the following to amend the
 8 development approval so that it covers the changed development
 9 proposal:
- 10 (a) if the application involves amendment of an essential design
 11 element—the entity who decided the essential design element
 12 under section 185;
- 13 (b) in any other case—the territory planning authority.
- 14 (3) An application under subsection (2) must—
- 15 (a) be in writing signed by the applicant; and
- 16 (b) if the application is made by someone other than the lessee of
 17 the land to which the application relates, be signed by—
- 18 (i) if the land to which the application relates is subject to a
 19 lease—the lessee of the land; or
- 20 (ii) if the land to which the application relates is public land or
 21 unleased land—the custodian for the land; or
- 22 (iii) in any other case—the territory planning authority; or
- 23 (c) if the application relates to land under a land sublease and—
- 24 (i) the applicant is not the sublessee—also be signed by the
 25 sublessee; and
- 26 (ii) the applicant is not the lessee—also be signed by the lessee.
- 27 (4) A person who signs an application under subsection (3) (b) (i) or (c)
 28 is taken to be an applicant in relation to the application.

203 Deciding applications to amend development approvals

(1) In deciding whether to amend a development approval in accordance with an application under section 202, the decision-maker must consider the application, and take action in relation to the application, as if—

(a) the development originally approved is completed; and

(b) the application is a development application to be decided under section 182.

Example

Tony has development approval to build a house (the *original approval*). Tony starts to build the house, but discovers that he needs an extra room in the house. He applies to amend the original approval.

In deciding whether to amend the original approval, the territory planning authority must treat the application to amend as if the house has been built in accordance with the original approval, and the application is for approval to add an extra room.

Note 1 A decision of the territory planning authority to amend a development approval subject to a condition, or refuse to amend a development approval, may be reconsidered (see s 195 (1) (a)). The approval-holder may apply for review of a decision under s 196 (1) (b) (ii) to confirm the original decision (see sch 6, pt 6.2, item 79).

Note 2 The decision-maker must decide whether to amend the development approval as soon as possible (see [Legislation Act](#), s 151B).

(2) The decision-maker must refuse to amend the development approval if satisfied that—

(a) the changed development proposal would be in breach of a condition on the approval relating to a conditional environmental significance opinion; or

Note If a conditional environmental significance opinion has been given for a development, the development approval must include a condition that the development comply with the condition in the environmental significance opinion (see s 184 (1) (d)).

- (b) if the original development approval included an offset condition—the offset condition on the approval as amended would not provide an offset at least equivalent to the offset provided by the original approval.
 - (3) Also, the decision-maker must refuse to amend a development approval unless satisfied that, after the amendment, the development approved will be substantially the same as the development for which approval was originally given.
- 204 Exception to s 203 (1) (b)—referral requirements**
- (1) This section applies if—
 - (a) a development application was referred under section 168 to the conservator of flora and fauna or the Commonwealth Minister responsible for administering the [EPBC Act](#); and
 - (b) an application is made under section 202 to amend the development approval to which the application relates (the *amendment application*).
 - (2) Despite section 203 (1) (b), the decision-maker need not refer the amendment application to an entity under section 168 if the decision-maker is satisfied that the amendment application—
 - (a) does not affect any part of the development approval in relation to which the entity gave advice; or
 - (b) is not reasonably expected to contain matters upon which the entity would wish to comment.
- Note* Under s 203 (1) (b), an amendment to amend a development approval is subject to the same requirements as an application for development approval, which would ordinarily require the amendment application to be referred to relevant entities under s 168.

205 Exception to s 203 (1) (b)—waiver of notification requirement

Despite section 203 (1) (b), the decision-maker may waive the requirement to publicly notify an application to amend a development approval if satisfied that—

- (a) the amendment will not involve any change that would be inconsistent with an essential design element; and
- (b) the amendment will do no more than minimally increase—
 - (i) the adverse impact of the development otherwise than on the applicant; and
 - (ii) the environmental impact of the development.

206 When development approvals do not require amendment

(1) This section applies if—

- (a) the decision-maker has given development approval for a development proposal; and
- (b) the development proposal changes (the *changed development proposal*) so that it is not covered by the development approval; and
- (c) a circumstance prescribed by regulation under subsection (3) applies.

(2) The changed development proposal is taken to be in accordance with the development approval.

(3) A regulation may prescribe circumstances for subsection (1) (c).

Note 1 The development may still need building approval, or further building approval, under the *Building Act 2004*.

Note 2 The development must also comply with the lease for the land on which it is undertaken.

Division 7.6.5 Effect and duration of development approvals

207 When development approvals take effect

- (1) This section applies if a decision-maker approves a development application under section 182 (Deciding development applications).
- (2) If the circumstances mentioned in column 2 of an item in table 207 apply to a development approval, the approval (or an approval as varied or substituted by the ACAT) takes effect on the day mentioned in column 3 of the item.

Table 207 When development approvals take effect

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
1	<ol style="list-style-type: none">(a) no third party may make an application for ACAT review of the approval decision or there are no representations about the development application; and(b) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and(c) the approval is not subject to a condition that something must happen before the approval takes effect	the day after the day the approval decision is made

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
2	<ul style="list-style-type: none">(a) 1 or more representations are made about the development application; and(b) no application for ACAT review of the approval decision was made within 20 working days after the day that every person who made a representation was given the notice of the decision under s 193; and(c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and(d) the approval is not subject to a condition that something must happen before the approval takes effect; and(e) no reconsideration application has been made in relation to the approval	21 working days after the day notice of the approval decision is given under s 193

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
3	(a) an application for ACAT review of the approval decision has been made; and (b) the ACAT has— (i) confirmed or varied the approval decision; or made a substitute approval decision; or (ii) the application was dismissed or struck out; and (c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and (d) the approval is not subject to a condition that something must happen before the approval takes effect	(a) if the ACAT makes an order confirming, varying or substituting the approval decision—the day the order takes effect under the <i>ACT Civil and Administrative Tribunal Act 2008</i> , s 69; or (b) in any other case—the day the application is dismissed or struck out
4	(a) the development includes an activity not allowed under the lease for the land on which the development is proposed to take place; and (b) the approval is not subject to a condition that something must happen before the approval takes effect; and (c) no reconsideration application has been made in relation to the approval	the latest of the following days: (a) the day the approval would take effect if the development did not include an activity not allowed under the lease; (b) the day the lease variation to allow the activity takes effect; (c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
5	<ul style="list-style-type: none"> (a) the approval is subject to a condition that something must happen before the approval takes effect; and (b) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and (c) no reconsideration application has been made in relation to the approval 	<p>the latest of the following days:</p> <ul style="list-style-type: none"> (a) the day the approval would take effect if it were not subject to the condition; (b) the day the condition is complied with; (c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3
6	<ul style="list-style-type: none"> (a) the development includes an activity not allowed under the lease for the land on which the development is proposed to take place; and (b) the approval is subject to a condition that something must happen before the approval takes effect; and (c) no reconsideration application has been made in relation to the approval 	<p>the latest of the following days:</p> <ul style="list-style-type: none"> (a) the day the approval would take effect under item 4, column 3 if the development did not include an activity not allowed under the lease; (b) the day the approval would take effect under item 5, column 3 if it were not subject to the condition; (c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
7	<p>(a) a reconsideration application has been made in relation to the approval; and</p> <p>(b) the territory planning authority—</p> <p>(i) has made a reconsideration decision; and</p> <p>(ii) did not substitute the approval with a decision to refuse the development application under s 182 (1) (c)</p>	<p>the latest of the following days:</p> <p>(a) the day the approval would take effect if the reconsideration decision were the original decision;</p> <p>(b) the day after the reconsideration decision is made;</p> <p>(c) if an application for ACAT review of the reconsideration decision has been made—the day mentioned in item 3, column 3</p>

- 1 (3) In this section:
- 2 ***application for ACAT review***, of a decision, means an application for
- 3 ACAT review under section 502.
- 4 ***approval decision***, in relation to a development application, means a
- 5 decision to approve the application under section 182.
- 6 *Note* ***Approve*** for s 182 includes a partial approval. Also, an application may
- 7 be approved subject to conditions (see s 182 (1) (b)).
- 8 ***reconsideration application***—see section 195 (2).
- 9 ***reconsideration decision*** means a decision under section 196 in
- 10 relation to a reconsideration application.
- 11 ***representation***, in relation to a development application, means a
- 12 representation made under section 177 about the application.
- 13 ***third party*** means an entity other than the applicant for the
- 14 development approval or the territory planning authority.

208 End of development approvals generally

- (1) This section applies to a development approval other than—
- (a) a development approval that consists only of a variation of a lease; or
 - (b) a part of a development approval that consists of a variation of a lease; or
 - (c) a development approval, or part of a development approval, that relates only to the use of land, or to a building or other structure on land.
- (2) The development approval ends—
- (a) 5 years after the day the approval takes effect (the **5-year period**); or
 - (b) if an extension of the 5-year period is granted under this section—at the end of the extended period; or
 - (c) if the approval is revoked under section 201.
- (3) The territory planning authority may, on application made within 6 months after the end of the 5-year period, extend the period if the development to which the approval relates—
- (a) has started and is substantially progressed; and
 - (b) would be approved if it were the subject of a development application submitted on the same day as the application for the extension.
- (4) The territory planning authority may also extend the 5-year period on application under subsection (3) if—
- (a) an appeal is made to a court in relation to the development approval; and
 - (b) taking into account when the appeal is likely to end, more time is needed to start or complete the development to which the approval relates.

1 (5) The 5-year period may be extended—

2 (a) more than once; and

3 (b) for a cumulative period of up to 2 years.

4 *Note* A development approval to which this section applies continues unless
5 the approval ends under this section, s 209 or s 210.

6 **209 End of development approvals for lease variations**

7 (1) This section applies to—

8 (a) a development approval that consists only of a variation of a
9 lease; or

10 (b) a part of a development approval that consists of a variation of
11 a lease.

12 (2) The development approval, or part of the approval, ends—

13 (a) if—

14 (i) the lease is varied in accordance with the approval; or

15 (ii) the lease is terminated; or

16 (iii) the approval is revoked under section 201; or

17 (iv) the lease expires and no application is made under
18 section 285 (Grant of further leases) for a further lease; or

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

21 (v) the lease is subject to a condition that a charge be paid to
22 the Territory in relation to the lease variation under
23 section 307 (Working out amount payable to remove
24 concessional status) or section 324 (Lease variation charge
25 payable for chargeable variation)—2 years after the day the
26 charge is determined; or

(b) at the end of—

(i) 2 years starting on the day after the day the approval takes effect; or

(ii) if an appeal is made to a court in relation to the approval—2 years starting on the day after the day the appeal ends; or

(iii) if, in relation to a decision about a payout amount under section 307 or a charge under section 324, an application for review to the ACAT is made—2 years starting on the day the application is decided, withdrawn, dismissed or struck out.

(3) The territory planning authority may extend the development approval, or part of the approval, for up to 2 years.

Note A development approval to which this section applies continues unless the approval ends under s 208, this section or s 210.

210 End of development approvals for use

(1) This section applies to the following:

(a) a development approval, or part of a development approval, that—

(i) relates only to the use of land, or a building or other structure on the land, under a lease or declared unit title lease (the *affected lease*); and

(ii) does not involve a lease variation;

(b) a development approval, or part of a development approval, that relates only to the use of land under a licence or permit.

(2) The development approval ends if—

(a) the affected lease expires and no application is made under section 285 (Grant of further leases) for a further lease; or

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

- 1 (b) the approval is revoked under section 201; or
- 2 (c) if the approval states a period for the end of the approval—the
- 3 period ends; or
- 4 (d) the approval is surrendered, other than for a lease variation or
- 5 renewal; or
- 6 (e) the affected lease is surrendered (other than under section 285
- 7 (Grant of further leases)) or terminated; or
- 8 (f) for a declared unit title lease—a further lease is not granted
- 9 under the *Unit Titles Act 2001*, section 167AA; or
- 10 (g) if the approval relates to the use of land under a licence or
- 11 permit—the licence or permit ends.

12 *Note* A development approval to which this section applies continues unless
 13 the approval ends under s 208, s 209 or this section.

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

- 17 (a) the use is not continuous;
- 18 (b) someone deals with the affected lease;
- 19 (c) a further lease is granted for the affected lease on application
- 20 under section 285 (Grant of further leases), whether the grant
- 21 happens immediately after the expiry of the affected lease or
- 22 otherwise;
- 23 (d) for a declared unit title lease—a further lease is granted under
- 24 the *Unit Titles Act 2001*, section 167AA.

25 **Examples—par (a)**

- 26 1 the use is interrupted
- 27 2 the use is intermittent

- 1 (4) The territory planning authority must tell the registrar-general about
2 the ending of a development approval to which this section applies
3 if—
4 (a) the authority gave the registrar-general notice of the approval;
5 and
6 (b) the approval is surrendered to the authority.
7 (5) In this section:
8 *declared unit title lease* means a lease of a unit or common property
9 in a units plan that subdivides land under a declared land sublease.
- 10 **211 Development approval continues unless ended**
11 A development approval, including a development approval that has
12 been extended, continues unless ended under this part.

- 1 **Part 7.7** **Development applications for**
2 **development undertaken without**
3 **approval**
- 4 **212** **Development applications for development undertaken**
5 **without approval**
- 6 (1) This section applies if—
7 (a) a development has been undertaken; and
8 (b) development approval was required for the development; and
9 (c) there was no development approval for the development.
- 10 (2) The lessee of the land (or for land under a land sublease, the
11 sublessee) where the development was undertaken may apply for
12 development approval for the development.
- 13 (3) The territory planning authority must treat the application for
14 development approval as if the development was not undertaken.
- 15 *Note* A proceeding under part 12.1 (Development offences) is not affected by
16 an application made or approved under this section (see s 399 (7)).

Chapter 8 Territory priority projects

213 Meaning of *territory priority project*

In this Act:

territory priority project means—

- (a) a development proposal declared to be a territory priority project under section 215; or
- (b) a development proposal related to light rail.

214 Meaning of *related to light rail*

For this Act, a development proposal is *related to light rail* if the development to which the proposal relates may facilitate the construction, ongoing operation and maintenance, repairs, refurbishment, relocation or replacement of—

- (a) light rail track; or
- (b) infrastructure within, or partly within, 1km from—
 - (i) existing light rail track; or
 - (ii) light rail track identified in a development proposal in a development application that includes the construction, extension, refurbishment, relocation or replacement of light rail track; or
 - (iii) light rail track identified in a development approval that authorises the construction, extension, refurbishment, relocation or replacement of light rail track.

Examples—par (b)

- 1 access roads, footpaths and bicycle lanes
- 2 depot facilities
- 3 electricity supply infrastructure including substations, overhead lines and supports
- 4 entry and access points and safety barriers

Section 215

- 1 5 signalling and other control facilities
2 6 stops, stations, terminus and associated shelters, seating and toilet amenities,
3 ticketing infrastructure, parking, set-down areas and bicycle storage
4 7 temporary infrastructure for construction of light rail such as safety fencing,
5 scaffolding, access roads and parking

6 **215 Declaration of territory priority projects**

- 7 (1) The Chief Minister and Minister may jointly declare that a
8 development proposal is a territory priority project (a ***territory***
9 ***priority project declaration***) if the Chief Minister and Minister are
10 satisfied that the proposal—
11 (a) would achieve a major government policy outcome that is of
12 significant benefit to the people of the ACT; or
13 (b) would substantially facilitate the achievement of the desired
14 future planning outcomes set out in the planning strategy, a
15 relevant district strategy, the territory plan or any relevant zone;
16 or
17 (c) is for significant infrastructure or facilities, that are of significant
18 benefit to the people of the ACT.
19 (2) A territory priority project declaration is a notifiable instrument.
20 (3) A territory priority project declaration for a development proposal
21 must be made before the development application for the proposal is
22 made under section 164.
23 (4) Before making a territory priority project declaration, the Minister—
24 (a) may seek the advice of the territory planning authority; and
25 (b) must publish a notice on the authority website—
26 (i) stating that copies of the proposed declaration are available
27 on the website; and

- 1 (ii) inviting people to give written comments about the
2 proposed declaration to the authority at a stated address
3 during a stated period of at least 15 working days
4 (the *consultation period*); and
- 5 (iii) if the development proposal requires a major plan
6 amendment to proceed—
- 7 (A) including a description of the proposed major plan
8 amendment; and
- 9 (B) inviting the national capital authority to give written
10 comments about the proposed declaration to the
11 authority during the consultation period; and
- 12 (C) including the supporting report for the major plan
13 amendment; and
- 14 (c) must consider any comments received during the consultation
15 period.
- 16 (5) As soon as practicable after making a territory priority project
17 declaration, the Minister must present a statement to the Legislative
18 Assembly setting out the reasons for making the declaration.
- 19 (6) The validity of a territory priority project declaration is not affected
20 by a failure to present the statement within the required time.
- 21 (7) If the Chief Minister is also the Minister, another Minister must make
22 the declaration under subsection (1) with the Chief Minister.
- 23 (8) In this section:
- 24 *development proposal* includes a proposal involving 2 or more
25 stages, sites or development applications.
- 26 *supporting report*—see section 53.

- 1 **216 Time limits on proceedings—territory priority projects**
- 2 (1) A person may not start a proceeding in a court in relation to a decision
- 3 to make a territory priority project declaration more than 2 months
- 4 after the day the declaration is notified.
- 5 (2) Despite section 80 (Limitations on challenge to validity of territory
- 6 plan provisions), the validity of a provision of the territory plan must
- 7 not be questioned in a legal proceeding if—
- 8 (a) the provision was inserted or amended by a major plan
- 9 amendment approved for a territory priority project; and
- 10 (b) the proceeding started more than 2 months after the day the
- 11 provision, or amendment of the provision, commenced.
- 12 (3) A person may not start a proceeding in a court in relation to a decision
- 13 under part 6.3 (Environmental impact assessment), chapter 7
- 14 (Development assessment and approvals) or chapter 10 (Leases and
- 15 licences) more than 2 months after the day the decision is made if the
- 16 decision relates to a territory priority project.

Chapter 9 Offsets

Part 9.1 Important concepts

217 Meaning of *protected matter*

(1) In this Act:

protected matter means—

- (a) matter protected by the Commonwealth; or
- (b) a declared protected matter.

(2) The Minister may declare a matter to be a protected matter (a *declared protected matter*).

(3) A declaration is a disallowable instrument.

218 Meaning of *matter protected by the Commonwealth*

(1) In this Act:

matter protected by the Commonwealth means a matter protected by a provision of the [EPBC Act](#), chapter 2 (Protecting the environment), part 3 (Requirements for environmental approvals).

(2) In this section:

matter protected by a provision of the [EPBC Act](#), chapter 2, part 3—see the [EPBC Act](#), section 34 (What is *matter protected* by a provision of Part 3?).

Note The [EPBC Act](#), ch 2, pt 3 deals with taking action that would have a significant impact on a matter of national environmental significance. Matters of national environmental significance include the following:

- world heritage properties
- national heritage places
- wetlands of international importance (Ramsar wetlands)
- threatened species and threatened ecological communities

- 1 • migratory species protected under international agreements
- 2 • nuclear actions
- 3 • water resources in relation to coal seam gas development and large
- 4 coal mining development.

5 **219 Meaning of *offset***

6 In this Act:

7 *offset*, for a development that is likely to have a significant adverse
8 environmental impact on a protected matter, means environmental
9 compensation for the likely impact.

10 **220 Meaning of *offsets policy***

11 In this Act:

12 *offsets policy* means a statement—

13 (a) describing—

14 (i) how environmental compensation may be made to offset
15 the impact of development that has a significant adverse
16 environmental impact on protected matters; and

17 (ii) suitable forms for offsets; and

18 (b) notified under—

19 (i) for an initial offsets policy—section 222; or

20 (ii) for a revised offsets policy—section 227.

Part 9.2 Offsets policy

Division 9.2.1 Preliminary

221 Meaning of *Minister*—pt 9.2

In this part:

Minister means the Minister responsible for administering the [Nature Conservation Act 2014](#), chapter 13.

Division 9.2.2 Initial offsets policy

222 Initial offsets policy

- (1) The Minister may make an initial offsets policy.
- (2) An initial offsets policy is a notifiable instrument.
- (3) The Minister may amend the initial offsets policy only by—
 - (a) reviewing and revising the offsets policy under sections 223 to 227; or
 - (b) making minor amendments to the policy under section 228.

Division 9.2.3 Revised offsets policy

223 Offsets policy—monitoring and review

- (1) The Minister must monitor the effectiveness of the offsets policy.
- (2) The Minister must consider, at least once every 5 years, whether the offsets policy needs to be reviewed.
- (3) In considering whether the offsets policy needs to be reviewed, the Minister must consult—
 - (a) the territory planning authority; and
 - (b) the conservator of flora and fauna.

1 (4) If the Minister decides that the offsets policy needs to be reviewed,
2 the Minister must review the offsets policy.

3 (5) In reviewing the offsets policy, the Minister must consult—

4 (a) the territory planning authority; and

5 (b) the conservator of flora and fauna.

6 **224 Draft revised offsets policy—Minister to prepare**

7 (1) This section applies if the Minister—

8 (a) reviews the offsets policy under section 223; and

9 (b) considers that revisions of the offsets policy are appropriate.

10 (2) The Minister must prepare a draft offsets policy (a ***draft revised***
11 ***offsets policy***) incorporating the revisions.

12 (3) In preparing a draft revised offsets policy, the Minister must
13 consult—

14 (a) the territory planning authority; and

15 (b) the conservator of flora and fauna.

16 **225 Draft revised offsets policy—public consultation**

17 (1) If the Minister prepares a draft revised offsets policy, the Minister
18 must also prepare a notice about the policy (a ***consultation notice***).

19 (2) If the Minister publishes a consultation notice about a draft revised
20 offsets policy—

21 (a) anyone may make a written submission to the Minister about the
22 policy; and

23 (b) submissions may be made to the Minister within 6 weeks after
24 the day the consultation notice is published on the authority
25 website (the ***consultation period***); and

1 (c) a person making a submission may, in writing, withdraw the
2 submission at any time.

3 (3) A consultation notice must—

4 (a) state the matters mentioned in subsection (2) (a) to (c); and

5 (b) include the draft revised offsets policy; and

6 (c) be published on the authority website.

7 **226 Draft revised offsets policy—revision**

8 If the consultation period for a draft revised offsets policy has ended,
9 the Minister must—

10 (a) consider any submissions received during the consultation
11 period; and

12 (b) make any revisions to the draft revised offsets policy that the
13 Minister considers appropriate; and

14 (c) prepare a final version of the draft revised offsets policy.

15 **227 Draft revised offsets policy—final version and notification**

16 (1) The final version of a draft revised offsets policy prepared under
17 section 226 or section 228 is an offsets policy.

18 (2) An offsets policy is a notifiable instrument.

19 **228 Offsets policy—minor amendments**

20 (1) This section applies if—

21 (a) an offsets policy is in force (the *existing policy*); and

22 (b) the Minister considers that minor amendments to the existing
23 policy are appropriate.

- 1 (2) The Minister—
- 2 (a) may prepare a new draft offsets policy, incorporating the minor
- 3 amendments into the existing policy; and
- 4 (b) need not comply with the consultation requirements in
- 5 section 225; and
- 6 (c) may prepare a final version of the new draft offsets policy, as
- 7 amended.

- 8 (3) In this section:
- 9 ***minor amendment***, of an offsets policy, means an amendment that—
- 10 (a) improves the effectiveness or technical efficiency of the offsets
- 11 policy without changing the substance of the policy; or
- 12 (b) corrects a formal error.

13 **Examples**

- 14 • minor correction to improve effectiveness
- 15 • omission of something redundant
- 16 • rewording to clarify language
- 17 • technical adjustment to improve efficiency

18 **Division 9.2.4 Offsets policy—implementation and**

19 **guidelines**

20 **229 Offsets policy—authority to implement**

21 The territory planning authority must take reasonable steps to

22 implement the offsets policy.

23 **230 Offsets policy—guidelines**

- 24 (1) The Minister may make guidelines about the implementation of the
- 25 offsets policy (***offsets policy guidelines***).
- 26 (2) The offsets policy guidelines are a notifiable instrument.

-
- 1 **231 Draft offsets policy guidelines**
- 2 (1) If the Minister intends to make offsets policy guidelines, the Minister
- 3 must prepare a draft version of the guidelines (the ***draft offsets policy***
- 4 ***guidelines***).
- 5 (2) In preparing the draft offsets policy guidelines, the Minister must
- 6 consult the conservator of flora and fauna.
- 7 **232 Draft offsets policy guidelines—public consultation**
- 8 (1) If the Minister prepares draft offsets policy guidelines, the Minister
- 9 must also prepare a notice about the draft guidelines (a ***consultation***
- 10 ***notice***).
- 11 (2) If the Minister publishes a consultation notice about draft offsets
- 12 policy guidelines—
- 13 (a) anyone may make a written submission to the Minister about the
- 14 draft guidelines; and
- 15 (b) submissions may be made to the Minister within 3 weeks after
- 16 the day the consultation notice is published on the authority
- 17 website (the ***consultation period***); and
- 18 (c) a person making a submission may, in writing, withdraw the
- 19 submission at any time.
- 20 (3) A consultation notice must—
- 21 (a) state the matters mentioned in subsection (2) (a) to (c); and
- 22 (b) include the draft offsets policy guidelines; and
- 23 (c) be published on the authority website.

- 1 **233 Draft offsets policy guidelines—revision**
- 2 If the consultation period for the draft offsets policy guidelines has
- 3 ended, the Minister must—
- 4 (a) consider any submissions received during the consultation
- 5 period; and
- 6 (b) make any revisions to the draft offsets policy guidelines that the
- 7 Minister considers appropriate.
- 8 **234 Offsets policy guidelines—monitoring and review**
- 9 (1) The Minister must monitor the effectiveness of the offsets policy
- 10 guidelines.
- 11 (2) The Minister must consider, at least once every 5 years, whether the
- 12 offsets policy guidelines need to be reviewed.
- 13 (3) In considering whether the offsets policy guidelines need to be
- 14 reviewed, the Minister must consult the conservator of flora and
- 15 fauna.

Part 9.3 Offsets policy—other provisions

235 Offsets—consistency with offsets policy

An offset must be consistent with the offsets policy.

236 Offsets—calculating value

- (1) The Minister may determine how the value of an offset is to be calculated (an *offset value calculation determination*).
- (2) An offset value calculation determination must be consistent with the offsets policy.
- (3) An offset value calculation determination is a notifiable instrument.

237 Offsets—form

- (1) An offset for a development may be in—
 - (a) a form prescribed by regulation; or
 - (b) any other form the territory planning authority considers appropriate.
- (2) However, an offset for a development must be in a form that is consistent with the offsets policy.

238 Offsets register

- (1) The territory planning authority must keep a register of each offset (the *offsets register*).
- (2) The offsets register must include the following for each offset:
 - (a) the development approval that includes the offset condition requiring the offset;
 - (b) the details of the offset;
 - (c) if the offset requires an offset management plan—the offset management plan;

- 1 (d) details of a lease if—
- 2 (i) the offset requires another lease to be subject to a
- 3 condition; and
- 4 (ii) the condition requires the lessee of the other lease to
- 5 comply with an offset management plan applying to the
- 6 lease;
- 7 (e) anything else prescribed by regulation.
- 8 (3) The offsets register may include anything else the authority considers
- 9 relevant.
- 10 *Note* The authority may give an evidentiary certificate about details kept in the
- 11 offsets register (see s 510).

Part 9.4 Offset conditions

239 Meaning of *decision-maker*—pt 9.4

In this part:

decision-maker, for an offset condition or offset management plan, means the decision-maker for the development approval in relation to which the condition or plan applies.

240 Meaning of *offset condition*

(1) In this Act:

offset condition, for a development approval, means a condition—

- (a) identifying a protected matter that is likely to suffer a significant adverse environmental impact from the development; and
- (b) requiring an offset to compensate for the likely impact of the development on the protected matter.

(2) An offset condition for a development approval may include a requirement that the proponent of the development have an offset management plan for the offset.

(3) Also, an offset condition for a development approval may include a requirement that—

- (a) if the offset land is not the land to which the approval applies—
the lease for the offset land be subject to a condition requiring the lessee of the offset land to comply with an offset management plan for the offset; and

Note To satisfy an offset condition with this kind of requirement, another development approval may be needed to vary the lease for the offset land to include a condition on the lease for the offset land that the lessee must comply with the offset management plan.

- 1 (b) if the offset will be on public land—
2 (i) a new public land management plan for the land be
3 prepared, including stated matters; or
4 (ii) an existing public land management plan for the land be
5 varied in a stated way; and
6 (c) if the offset is to be on land described in a rural lease—
7 (i) a new land management agreement for the land be
8 prepared, including stated matters; or
9 (ii) an existing land management agreement for the land be
10 varied in a stated way.

- 11 (4) In this section:

12 *offset land*, for an offset, means the land on which the offset is to be
13 located.

14 **241 Meaning of *offset management plan***

- 15 (1) In this Act:

16 *offset management plan*, for an offset, means a plan to achieve the
17 offset that is—

- 18 (a) approved by a decision-maker under section 244 (Draft offset
19 management plan—submission to decision-maker); or
20 (b) amended by the decision-maker under—
21 (i) section 247 (Offset management plan—amendment
22 initiated by offset manager); or
23 (ii) section 248 (Offset management plan—amendment
24 initiated by decision-maker).

- 25 (2) An offset management plan must be published on the authority
26 website.

1 **242 Meaning of *offset manager***

2 In this Act:

3 ***offset manager***, for an offset management plan—

4 (a) means—

5 (i) if a lease of land includes a condition that requires the
6 lessee of the land to comply with an offset management
7 plan in relation to an offset—the lessee of the land; or

8 (ii) if the offset management plan applies to unleased land or
9 public land—the custodian of the land; or

10 (iii) in any other case—the person identified in the offset
11 management plan as the offset manager; but

12 (b) if paragraph (a) (i) does not apply—does not include the lessee
13 of the land.

14 **243 Draft offset management plan—proponent to prepare**

15 (1) If an offset condition for a development approval requires the
16 proponent to have an offset management plan for the offset, the
17 proponent must prepare a draft offset management plan for the offset.

18 (2) The draft offset management plan must—

19 (a) identify the land to which it applies; and

20 (b) include a plan describing how the offset may be achieved; and

21 (c) if the offset management plan will not apply to leased land,
22 unleased land or public land—identify the offset manager for the
23 offset management plan; and

24 (d) include provisions about—

25 (i) how the effectiveness of the plan is to be monitored; and

26 (ii) when the plan is to be reviewed; and

27 (e) include any matters prescribed by regulation.

- 1 (3) The draft offset management plan may—
- 2 (a) state the term of the offset management plan; and
- 3 *Note* If no term is stated, the offset management plan expires when the
- 4 development approval, including the offset condition requiring the
- 5 offset management plan, ends (see s 250). Otherwise the offset
- 6 management plan operates indefinitely.
- 7 (b) apply, adopt or incorporate an instrument as in force from time
- 8 to time.
- 9 *Note* The text of an applied, adopted or incorporated law or instrument,
- 10 whether applied as in force from time to time or at a particular time, is
- 11 taken to be a notifiable instrument if the operation of the [Legislation Act](#),
- 12 s 47 (5) or (6) is not disappplied (see s 47 (7)).
- 13 (4) In preparing a draft offset management plan, the proponent must
- 14 consult the following entities and seek their written agreement to the
- 15 draft offset management plan:
- 16 (a) the conservator of flora and fauna;
- 17 (b) if the offset management plan will apply to leased land—the
- 18 lessee of the land (unless the lessee is the proponent);
- 19 (c) if the offset management plan will apply to unleased land or
- 20 public land—the custodian of the land.

21 **244 Draft offset management plan—submission to**

22 **decision-maker**

- 23 (1) The proponent must submit the draft offset management plan to the
- 24 decision-maker for approval.
- 25 (2) The draft offset management plan must be accompanied by the
- 26 written agreement of the entities mentioned in section 243 (4).
- 27 (3) If the proponent submits the draft offset management plan to the
- 28 decision-maker for approval, the decision-maker must—
- 29 (a) approve the draft offset management plan; or

- 1 (b) return the draft offset management plan to the proponent and
2 direct the proponent to take 1 or more of the following actions
3 in relation to it:
- 4 (i) undertake stated further consultation;
5 (ii) consider a relevant report;
6 (iii) revise the draft offset management plan in a stated way; or
7 (c) reject the draft offset management plan.
- 8 (4) However, the decision-maker may approve the draft offset
9 management plan only if the plan is consistent with—
- 10 (a) the offset condition in the development approval requiring the
11 offset; and
12 (b) the offsets policy.

13 *Note* This section is subject to s 498 and s 499.

14 **245 Draft offset management plan—decision-maker's**
15 **direction to revise etc**

- 16 (1) This section applies if the decision-maker gives the proponent a
17 direction under section 244 (3) (b).
- 18 (2) The proponent must—
- 19 (a) give effect to the direction; and
20 (b) if the direction is to revise the draft offset management plan in a
21 stated way—consult the entities mentioned in section 243 (4)
22 and seek their written agreement to the revisions; and
23 (c) resubmit the draft offset management plan to the decision-maker
24 for approval.
- 25 (3) The resubmitted draft offset management plan must be accompanied
26 by the written agreement of the entities mentioned in section 243 (4).

- 1 (4) The decision-maker must decide, under section 244 (3), what to do
2 with the resubmitted draft offset management plan.

3 **246 Offset management plan—unleased land or public land**

4 If an offset management plan applies to unleased land or public land,
5 the custodian of the land must take reasonable steps to implement the
6 plan.

7 *Note* Failure to implement the offset management plan is a controlled activity
8 (see sch 5, item 69).

9 **247 Offset management plan—amendment initiated by offset**
10 **manager**

11 (1) The offset manager for an offset management plan may apply to the
12 decision-maker to amend the offset management plan.

13 (2) The application must—

14 (a) be in writing; and

15 (b) include details of the proposed amendment.

16 (3) The decision-maker may amend the offset management plan only if
17 satisfied that the offset for the amended offset management plan is—

18 (a) at least equivalent to the offset for the original offset
19 management plan; and

20 (b) consistent with the offsets policy.

21 **248 Offset management plan—amendment initiated by**
22 **decision-maker**

23 (1) The decision-maker may, by written notice (an *amendment notice*)
24 given to the offset manager for an offset management plan, amend the
25 offset management plan if satisfied that—

26 (a) the offset for the amended offset management plan is at least
27 equivalent to the offset for the original offset management plan;
28 and

- 1 (b) the offset for the amended offset management plan is consistent
2 with the offsets policy.
- 3 (2) However, the decision-maker may amend the offset management plan
4 only if—
- 5 (a) the decision-maker has given the offset manager for the offset
6 management plan written notice of the proposed amendment
7 (a *proposal notice*); and
- 8 (b) the proposal notice states that written submissions about the
9 proposal may be made to the decision-maker before the end of a
10 stated period of at least 14 days after the day the proposal notice
11 is given to the offset manager; and
- 12 (c) after the end of the stated period, the decision-maker has
13 considered any submissions made in accordance with the
14 proposal notice.
- 15 (3) The amendment takes effect on the day the amendment notice is given
16 to the offset manager for the offset management plan or a later day
17 stated in the amendment notice.

18 **249 Offset management plan—reporting**

- 19 (1) The offset manager for an offset management plan must report to the
20 territory planning authority about the offset management plan—
- 21 (a) at least once every 3 years; and
- 22 (b) at any other time the authority requests.
- 23 (2) The territory planning authority must report to the Minister about
24 each offset management plan at least once every 3 years.

- 1 **250** **Offset management plan—expiry if development approval**
2 **ends**
- 3 (1) This section applies if—
- 4 (a) a development approval includes an offset condition requiring
5 the proponent of the development to have an offset management
6 plan for the offset; and
- 7 (b) the offset management plan is in force when the development
8 approval ends.
- 9 (2) The offset management plan expires when the development approval
10 ends.
- 11 **251** **Offset power must not be delegated**
- 12 A decision-maker must not delegate a power under this chapter.

Chapter 10 Leases and licences

Part 10.1 Preliminary

252 Definitions—ch 10

In this chapter:

building and development provision, in relation to a lease, means a provision of the lease that requires the lessee to undertake stated works on the land described in the lease or on unleased land.

consolidation means the surrender of 2 or more leases held by the same lessee and the grant of a new lease or leases to the lessee to consolidate the parcels of land described in the surrendered leases.

lessee means the person who is the proprietor of a lease, whether or not the person is the registered proprietor of the lease, and regardless of how the person became the proprietor of the lease.

market value, of a lease, means the amount that could be expected to be paid for the lease on the open market if it were sold by a willing but not anxious seller to a willing but not anxious buyer.

provision, of a lease, includes a provision incorporated in the lease by reference and any other provision to which the lease is subject.

registered proprietor, in relation to a lease, means the person who is registered under the [Land Titles Act 1925](#) as proprietor of the lease.

rental lease means a lease for rent that is more than a nominal rent.

residential lease means a lease that authorises only residential use of the land described in the lease.

rural lease means a lease granted for a rural purpose or purposes including a rural purpose.

single dwelling house lease means a lease granted under section 262 (1) (f).

- 1 ***subdivision***—
- 2 (a) means the surrender of 1 or more leases held by the same lessee,
- 3 and the grant of new leases to the lessee to subdivide the parcel
- 4 or parcels of land in the surrendered lease or leases; but
- 5 (b) does not include the subdivision of land—
- 6 (i) under the *Unit Titles Act 2001*; or
- 7 (ii) by the grant of a sublease.
- 8 ***sublease*** means a sublease of—
- 9 (a) a parcel of land, or part of a parcel of land, subject to a lease; or
- 10 (b) a building, or part of a building, on a parcel of land subject to a
- 11 lease.

12 **253 Meaning of *lease*—Act**

13 In this Act:

14 ***lease*** means a lease (other than a sublease) of land—

- 15 (a) granted under this Act; or
- 16 (b) granted or arising under the *Unit Titles Act 2001*.

17 *Note* Some leases are taken to have been granted under this Act (see s 619).

18 **254 When is a lease a *concessional lease*—Act**

19 (1) In this Act:

20 ***concessional lease***—

- 21 (a) means a lease—
- 22 (i) that is stated in the lease, or a memorial to the lease, to be
- 23 concessional and which has not had its concessional status
- 24 removed; or

- 1 (ii) granted on a concessional basis and which has not had its
2 concessional status removed; and
- 3 (b) includes the following:
- 4 (i) a consolidated or subdivided concessional lease;
- 5 (ii) a further concessional lease;
- 6 (iii) a regranted concessional lease.
- 7 **Example—par (a) (i)**
- 8 a condition of the lease or a notation or stamp on the lease
- 9 (2) For this Act, a lease has had its *concessional status removed* if—
- 10 (a) the lease is varied to remove its concessional status in
11 accordance with division 10.5.3 or the *Planning and*
12 *Development Act 2007* (repealed), division 9.4.2; or
- 13 (b) for a lease granted before 31 March 2008—either of the
14 following amounts has been paid:
- 15 (i) an amount in relation to the grant of the lease that is equal
16 to the lease’s market value at the time of payment or, if the
17 amount is paid in parts, at the time of the last payment;
- 18 (ii) an amount to reduce the rent payable under the lease to a
19 nominal rent under the *Land (Planning and Environment)*
20 *Act 1991* (repealed), section 186 (Variation of lease to pay
21 out rent).
- 22 (3) For this Act, a lease—
- 23 (a) is *granted on a concessional basis* if it is granted for a
24 consideration less than the full market value of the lease,
25 whether paid as a lump sum or payable as rent, or for no
26 consideration; but
- 27 (b) is not *granted on a concessional basis* only because the lease—
- 28 (i) was granted under the *Leases (Special Purposes) Act 1925*
29 (repealed); and

- 1 (ii) was granted before 1 January 1971; and
- 2 (iii) is a lease to which the *Leases (Special Purposes) Act 1970*
- 3 (repealed), section 5AB (Rent) applies.
- 4 (4) In this section:
- 5 ***consolidated or subdivided concessional lease*** means a lease—
- 6 (a) granted during a consolidation or subdivision involving the
- 7 surrender of 1 or more previous leases if 1 or more of the
- 8 previous leases was granted on a concessional basis; and
- 9 (b) which has not had its concessional status removed.
- 10 ***further concessional lease*** means a further lease—
- 11 (a) if the surrendered lease was granted on a concessional basis; and
- 12 (b) which has not had its concessional status removed.
- 13 ***paid***—an amount has been ***paid*** if the relevant amount—
- 14 (a) was paid to the Territory, a territory entity, the Commonwealth,
- 15 a Commonwealth entity or the entity that originally granted the
- 16 lease; or
- 17 (b) was waived by the Treasurer under the *Financial Management*
- 18 *Act 1996*, section 131, or part of the amount was waived and the
- 19 rest of the amount was paid in accordance with paragraph (a).
- 20 ***regranted concessional lease*** means a regranted lease—
- 21 (a) whether the regrant is on the same or different conditions, if the
- 22 surrendered lease was granted on a concessional basis; and
- 23 (b) which has not had its concessional status removed.

1 **255 Meaning of *market value lease*—Act**

2 In this Act:

3 *market value lease*—

- 4 (a) means a lease other than a concessional lease or a lease that is
5 possibly concessional; and
6 (b) includes a lease mentioned in schedule 3, part 3.2.

7 *Note* A lease is taken to be a market value lease if, after an application under
8 s 294, the territory planning authority is not satisfied it is a concessional
9 lease (see s 295 (3) (b) and s 296 (4) (b)).

10 **256 Meaning of *possibly concessional*—Act**

11 (1) For this Act, a lease is *possibly concessional* if the lease—

- 12 (a) was granted before 31 March 2008; and
13 (b) does not include a statement in the lease, or a memorial to the
14 lease, that the lease is granted on a concessional basis or
15 otherwise; and
16 (c) is mentioned in schedule 3, part 3.3.

17 (1) However, a lease is not *possibly concessional* if the lease is also
18 mentioned in schedule 3, part 3.2.

1 **Part 10.2 Grants of leases generally**

2 **Division 10.2.1 Grants of leases**

3 **257 Effect subject to pt 10.8**

4 This part has effect subject to part 10.8 (Rural leases).

5 **258 Authority may grant leases**

6 The territory planning authority is authorised to grant, on behalf of
7 the Executive, leases that the Executive may grant on behalf of the
8 Commonwealth.

9 *Note* For power to delegate this function, see s 25 (2).

10 **259 Granting leases**

11 (1) The territory planning authority may grant a lease by—

12 (a) auction; or

13 (b) tender; or

14 (c) ballot; or

15 (d) direct sale.

16 (2) A lease granted under this section must include—

17 (a) a statement—

18 (i) if the lease is granted on a concessional basis—that the
19 lease is concessional; or

20 (ii) if the lease is not granted on a concessional basis—to the
21 effect that the lease is a market value lease; and

22 **Examples—statement in lease**

23 1 a condition of the lease

24 2 a notation or stamp on the lease

Examples—statement to the effect that lease is market value lease

1 the lease is a market value lease

2 the lease is not concessional

(b) for a land rent lease—a statement that the lease is a land rent lease.

Note A grant must be lodged with the registrar-general under the [Land Titles Act 1925](#) (see that [Act](#), s 17 (2)).

(2) A lease granted under this section may include provisions—

(a) requiring the lessee to develop the land described in the lease, or any unleased land, in a stated way; or

(b) requiring the lessee to give security for the performance of any of the lessee's obligations under the lease.

260 Lease conditional on approval for stated development

(1) This section applies to a lease granted under section 259 if—

(a) a provision of the lease requires the lessee to obtain the approval of the territory planning authority to undertake development on the land described in the lease; and

(b) the development is exempt development.

(2) The lessee does not require the territory planning authority's approval for the development.

261 Eligibility for grant of lease

The territory planning authority may restrict the people eligible for the grant of a lease under section 259 by stating, in the relevant notice of auction, tender, ballot or direct sale, that a class of people is eligible or ineligible for the grant of a lease under the auction, tender, ballot or direct sale.

262 Restriction on direct sale by authority

(1) The territory planning authority must not grant a lease under section 259 (1) (d) unless—

(a) for a lease prescribed by regulation for this paragraph—

(i) the grant is in accordance with criteria prescribed by regulation for this paragraph; and

(ii) the Executive approves the grant; or

(b) for a lease prescribed by regulation for this paragraph—

(i) the grant is in accordance with criteria prescribed by regulation for this paragraph; and

(ii) the Minister approves the grant; or

(c) the Executive approves the grant under subsection (2); or

(d) for a community lease—the grant is approved by the Executive under section 289; or

(e) the lease is prescribed by regulation; or

(f) the grant is of a residential lease for a single dwelling house; or

(g) the grant is to give effect to a lease variation (whether by consolidation, subdivision or otherwise); or

(h) the grant is in accordance with—

(i) section 263 (Direct sale if single person in restricted class);
or

(ii) section 285 (Grant of further leases); or

(i) for a lease over an encroachment on adjoining land under section 157 (Applications for development encroaching on adjoining land if development prohibited)—the territory plan has been amended in accordance with section 86 (Rezoning—development encroaching on adjoining land).

-
- 1 (2) The Executive may approve the grant by direct sale of a lease (other
2 than a community lease) if satisfied that—
- 3 (a) the grant meets 1 or more of the grant objectives; and
- 4 (b) a grant by a means other than direct sale—
- 5 (i) is not likely to meet any of the grant objectives; or
- 6 (ii) may meet 1 or more of the grant objectives but is unlikely
7 to meet the objective to the same extent as the grant by
8 direct sale of the lease.
- 9 (3) The validity of a lease granted under section 259 (1) (d) is not taken
10 to be affected by a failure to comply with any criteria or requirement
11 applicable to the grant of the lease.
- 12 (4) In this section:
- 13 *adjoining land*—see section 156 (1) (a).
- 14 *encroachment*—see section 156 (1) (b).
- 15 *grant objective*—each of the following is a *grant objective*:
- 16 (a) to benefit the economy of the ACT or surrounding region;
- 17 (b) to contribute to the environment, or social or cultural features in
18 the ACT;
- 19 (c) to introduce new skills, technology or services in the ACT;
- 20 (d) to contribute to the export earnings and import replacement of
21 the ACT or surrounding region;
- 22 (e) to facilitate the achievement of a major policy objective.
- 23 *single dwelling house*—see the territory plan.

- 1 **263 Direct sale if single person in restricted class**
- 2 (1) This section applies if—
- 3 (a) under section 261 (Eligibility for grant of lease), the territory
- 4 planning authority restricts the people eligible to apply for a
- 5 lease; and
- 6 (b) only 1 person is eligible for the grant of the lease.
- 7 (2) The territory planning authority may grant the lease to the person
- 8 under section 259 (1) (d) without auctioning the lease, calling for
- 9 tenders or holding a ballot.
- 10 **264 Notice of direct sale**
- 11 (1) The territory planning authority must, not later than 10 working days
- 12 after the end of a quarter, give the Minister—
- 13 (a) a statement of—
- 14 (i) the number of single dwelling house leases granted during
- 15 the quarter; and
- 16 (ii) any other information prescribed by regulation for single
- 17 dwelling house leases; and
- 18 (b) a statement that sets out the prescribed information for each
- 19 other direct sale lease granted during the quarter; and
- 20 (c) a copy of each other direct sale lease granted during the quarter.
- 21 (2) The Minister must present the documents given under subsection (1)
- 22 to the Legislative Assembly not later than 5 sitting days after the day
- 23 the Minister receives the information.
- 24 (3) To remove any doubt, the validity of a single dwelling house lease or
- 25 other direct sale lease is not affected by a failure to comply with
- 26 subsection (1) or (2) in relation to the lease.

- 1 (4) In this section:
- 2 *other direct sale lease* means a lease granted by direct sale, other than
- 3 a single dwelling house lease.
- 4 *prescribed information*, for an other direct sale lease, means—
- 5 (a) the amount (if any) paid for the grant of the lease; and
- 6 (b) if the lease was granted with the approval of the Executive under
- 7 section 262 (2)—the reason for granting the lease with the
- 8 approval of the Executive.

9 **265 Direct sale leases subject to certain provisions**

- 10 (1) A lease granted under section 259 (1) (d) must be granted subject to
- 11 the provisions that are agreed between the territory planning authority
- 12 and the applicant for the lease.
- 13 (2) A regulation may prescribe a provision or matter that must, or must
- 14 not, be included in a lease granted under section 259 (1) (d).

15 **266 Authority need not grant lease**

- 16 (1) The territory planning authority need not grant a lease to an applicant,
- 17 even if applications for the lease have been invited.
- 18 (2) If applications for a lease have been invited subject to conditions, the
- 19 territory planning authority may, without granting a lease, invite fresh
- 20 applications for the lease subject to the same or other conditions.

21 **267 Planning report before granting leases**

- 22 (1) The territory planning authority may prepare a planning report in
- 23 relation to a proposal to grant a lease.
- 24 (2) The territory planning authority must prepare a planning report in
- 25 relation to a proposal to grant a lease if directed in writing to do so by
- 26 the Minister.

268 Lease must provide for access by road etc

(1) The territory planning authority must not grant a lease unless satisfied that, during the term of the lease, the lessee will have—

(a) direct access to the leased land from a road or road related area; or

(b) access to the leased land from a road or road related area by an access road or track, or in another way, that the lessee may use for entry or exit only, without charge and at any time.

(2) Access provided because of subsection (1) (b)—

(a) must not interfere with a building, garden or stockyard on the land (the *affected land*) through which the access is provided at the time the access is provided; and

(b) must be located in a way that causes as little damage to the affected land, or inconvenience to the lessee of the affected land, as possible.

(3) The validity of a lease granted under this part is not affected by a failure to comply with this section.

(4) In this section:

road—see the [Road Transport \(General\) Act 1999](#), dictionary.

road related area—see the [Road Transport \(General\) Act 1999](#), dictionary.

269 Failure to accept and execute lease

(1) This section applies if, not later than the end of the period prescribed by regulation, a person who is entitled to the grant of a lease under this chapter fails to—

(a) accept and execute the lease; or

(b) pay any amount the person is required to pay before being granted the lease.

- 1 (2) The territory planning authority may, by written notice to the person,
2 end the person's right to be granted the lease.
- 3 (3) A notice under subsection (2) must—
- 4 (a) state the ground on which it is given; and
- 5 (b) state that it takes effect on the day 20 working days after the day
6 it is given.
- 7 (4) If the territory planning authority does not know the home address of
8 the person to whom the notice under subsection (2) is to be given, the
9 authority may give public notice of the notice.
- 10 (5) A notice given under subsection (2) takes effect on the day
11 20 working days after the day it is given.
- 12 (6) A person whose right to be granted a lease has been ended under this
13 section does not have any claim for compensation in relation to the
14 ending of the right or for the recovery of any money paid to the
15 territory planning authority in relation to the grant of the lease.

16 **Division 10.2.2 Payment for leases**

17 **270 Payment for leases generally**

- 18 (1) The territory planning authority must not grant a lease other than for
19 payment of an amount that is not less than the market value of the
20 lease.
- 21 (2) However, subsection (1) does not apply in relation to—
- 22 (a) a rental lease granted for not less than the market rental value of
23 the lease; or
- 24 (b) a land rent lease; or
- 25 (c) a lease mentioned in section 271 (Payment for adjoining
26 concessional leases); or

- 1 (d) the grant of a community lease by—
2 (i) direct sale in accordance with section 289 (Grant of
3 community lease by direct sale); or
4 (ii) tender in accordance with section 291 (Grant of
5 community lease by tender); or
6 (e) a further lease granted under section 285 (Grant of further
7 leases); or
8 (f) the grant of a lease prescribed by regulation for which the
9 amount prescribed by regulation has been paid; or
10 (g) the grant of a lease of land prescribed by regulation to the
11 University of NSW.
12 (3) For subsection (1) and (2) (f), payment for a lease may include
13 monetary and non-monetary components.
14 **Examples—non-monetary components**
15 provision of infrastructure, goods, services or other works
16 (4) If before a lease is granted, a contract for the grant of the lease is
17 entered into, the market value of the lease must be determined at the
18 time the contract is entered into.
19 (5) The validity of a lease granted by the territory planning authority is
20 not affected by a failure to comply with this section.

21 **271 Payment for adjoining concessional leases**

- 22 (1) This section applies to the grant of a lease (a *new lease*) under
23 section 259 (1) (d) if—
24 (a) the new lease adjoins another lease (an *adjoining lease*) granted
25 to the person; and
26 (b) the adjoining lease is a concessional lease.

- 1 (2) The territory planning authority may grant the new lease on payment
2 of an amount worked out in the way the amount payable for the
3 adjoining lease was worked out.
- 4 (3) If the amount payable for the adjoining lease was worked out under a
5 repealed Act, the repealed Act applies to working out the amount
6 payable for the new lease as if the repealed Act had not been repealed.
- 7 (4) In this section:
- 8 *repealed Act* means—
- 9 (a) the *Land (Planning and Environment) Act 1991* (repealed); or
- 10 (b) the *Planning and Development Act 2007* (repealed).

11 **Division 10.2.3 Use of leased land**

12 **272 Use of land for leased purpose**

- 13 (1) Land, or a building or other structure on the land, in relation to which
14 a lease has been granted, whether before or after the commencement
15 of this part, must not be used for a purpose other than a purpose
16 authorised by the lease or this Act.
- 17 (2) However, if the lease is a residential lease, the land may also be used
18 for a home business.
- 19 *Note* While the use of a residential lease for a home business is authorised,
20 beginning to use the land for a home business requires development
21 approval unless the use is an exempt development (see pt 7.2).
- 22 (3) In this section:
- 23 *home business*, in relation to a residential lease of land, means a
24 profession, trade or other occupation carried on by a resident of a
25 building or other structure on the land.

273 Authority may authorise temporary use of land for special circumstances

(1) The territory planning authority may authorise the use of land subject to a lease, or a building or other structure on the land, for a purpose other than a purpose authorised by the lease if satisfied—

(a) the land, building or other structure is needed urgently for the purpose; and

(b) using the land, building or other structure for the purpose will achieve a significant public benefit.

(2) The territory planning authority must not authorise a use under subsection (1) for a period longer than is reasonably necessary for the purpose.

274 No right to use, flow and control of water

A lease or further lease granted under this chapter does not give a right to the use, flow and control of water (including water containing impurities) under the land described in the lease.

Note This section does not apply in relation to leases or further leases granted before the commencement of the [Water Resources Act 1988](#) (repealed) on 11 December 1998.

Division 10.2.4 Dealings with leases

275 Leases to which restriction under s 276 applies

(1) Section 276 applies in relation to the following leases:

(a) a lease that provides that the lessee cannot deal with the land, or part of the land, described in the lease without the prior written approval of the territory planning authority;

(b) a lease granted under section 259 (1) by auction, tender or ballot, if the class of people eligible or ineligible for the grant was restricted under section 261;

- 1 (c) a lease granted under section 259 (1) (d), other than—
2 (i) a lease granted to the Territory; or
3 (ii) a single dwelling house lease, other than a single dwelling
4 house lease prescribed by regulation; or
5 (iii) a lease—
6 (A) that was offered for sale under
7 section 259 (1) (a) or (c) but not sold; and
8 (B) for which not less than the market value was paid for
9 the subsequent direct sale; or
10 (iv) a lease—
11 (A) that was sold under section 259 (1) (c) but the contract
12 of sale was rescinded or otherwise ended before the
13 lease was granted under the contract; and
14 (B) for which not less than the market value was paid for
15 the subsequent direct sale;
16 (d) a lease prescribed by regulation.
17 (2) Section 276 does not apply in relation to the following leases:
18 (a) a concessional lease;
19 (b) a rural lease;
20 (c) a lease granted to the University of NSW of land mentioned in
21 section 270 (2) (g).
22 *Note* Dealings with concessional leases and rural leases are restricted under
23 s 302 and s 347.
24 (3) If section 276 applies to a lease, the territory planning authority must
25 tell the registrar-general that it applies.
26 *Note* If the territory planning authority tells the registrar-general that s 276
27 applies to a lease, the registrar-general must include a memorial in the
28 register to that effect (see [Land Titles Act 1925](#), s 72D).

1 **276** **Restriction on transfer, assignment and parting with**
2 **possession**

3 (1) This section applies if a memorial in relation to a lease states that this
4 section applies to it.

5 (2) The lessee under the lease, or anyone else with an interest in the lease,
6 must not, during the restricted period for the lease, deal with the lease
7 in either of the following ways without the territory planning
8 authority's written approval under section 277:

9 (a) assign or transfer the lease;

10 (b) part with possession of the land described in the lease or any part
11 of it.

12 (3) However, a regulation may exempt a lease from this section,
13 generally or in relation to a particular dealing.

14 (4) A dealing mentioned in subsection (2) in relation to a lease that is
15 made or entered into without the territory planning authority's
16 approval has no effect.

17 (5) However, subsection (4) does not apply to a dealing registered under
18 the [Land Titles Act 1925](#).

19 *Note* The registration of an interest in land under the [Land Titles Act 1925](#) takes
20 priority over any other interest in the land, subject to some exceptions
21 (see that [Act](#), s 58).

22 (6) In this section:

23 ***restricted period***, for a lease, means—

24 (a) for a lease that provides that the lessee cannot deal with the land,
25 or part of the land, described in the lease without the territory
26 planning authority's prior written approval—the period stated in
27 the lease or, if no period is stated, the term of the lease; or

- 1 (b) for a lease granted under section 259 (1) by auction, tender or
2 ballot, if the class of people eligible or ineligible for the grant
3 was restricted under section 261—5 years after the day the lease
4 was granted; or
- 5 (c) for a lease granted under section 259 (1) (d)—the period ending
6 5 years after the day the lease was granted; or
- 7 (d) for a lease prescribed by regulation—
8 (i) the period prescribed by regulation for the lease; or
9 (ii) if no period is prescribed—the term of the lease.

10 **277 Approval to transfer, assign, or part with possession**

- 11 (1) The territory planning authority must not approve a dealing under this
12 section in relation to a lease unless—
- 13 (a) satisfied that the person to whom it is proposed that the lease
14 should be assigned or transferred or the person to whom it is
15 proposed that possession of the land should be given, is a person
16 who satisfies the criteria prescribed under section 262 in relation
17 to the class of leases in which the lease is included; or
- 18 (b) if the lease was originally granted by restricted auction, tender
19 or ballot—satisfied that the person to whom it is proposed that
20 the lease should be assigned or transferred or the person to
21 whom it is proposed that possession of the land should be given,
22 is a person who could have been granted the original lease.
- 23 (2) The validity of a dealing made or entered into with the territory
24 planning authority's written approval is not affected—
- 25 (a) by a defect or irregularity in relation to the giving of the
26 approval; or
- 27 (b) because a ground, or all grounds, for the approval had not arisen.

278 Restriction on transfer, assignment and parting with possession—certain University of NSW leases

(1) This section applies to a lease granted to the University of NSW of land mentioned in section 270 (2) (g).

(2) The territory planning authority must tell the registrar-general that this section applies to the lease.

Note If the territory planning authority tells the registrar-general that this section applies to a lease, the registrar-general must include a memorial in the register to that effect (see [Land Titles Act 1925](#), s 72D).

(3) If a memorial stating that this section applies to the lease is included in the register under the [Land Titles Act 1925](#), the University of NSW, or anyone else with an interest in the lease, must not—

(a) for 20 years after the day the lease was granted—deal with the lease; and

(b) after the 20-year period—deal with the lease without the territory planning authority's approval under section 279.

(4) A dealing in relation to a lease to which this section applies that is made or entered into in contravention of subsection (3) has no effect.

(5) However, subsection (4) does not apply to a dealing registered under the [Land Titles Act 1925](#).

Note The registration of an interest in land under the [Land Titles Act 1925](#) takes priority over any other interest in the land, subject to some exceptions (see that [Act](#), s 58).

(6) In this section:

deal, with a lease—

(a) means—

(i) assign or transfer the lease; or

(ii) vary the lease; or

-
- 1 (iii) part with possession of the land described in the lease or
2 any part of it; but
- 3 (b) does not include a subdivision or consolidation of the lease.
- 4 **279 Approval to transfer, assign, or part with possession—**
5 **certain University of NSW leases**
- 6 (1) The territory planning authority must not approve a dealing under
7 section 278 (3) (b) in relation to a lease—
- 8 (a) without the Executive’s approval; and
- 9 (b) unless satisfied that—
- 10 (i) for an assignment or transfer of the lease or change in
11 possession of the land described in the lease—the person
12 to whom it is proposed that the lease should be assigned or
13 transferred or the person to whom it is proposed that
14 possession of the land should be given, is—
- 15 (A) a registered training organisation under the *National*
16 *Vocational Education and Training Regulator*
17 *Act 2011* (Cwlth); or
- 18 (B) a registered higher education provider under the
19 *Tertiary Education Quality and Standards Agency*
20 *Act 2011* (Cwlth); or
- 21 (ii) for a variation of the lease—the variation is consistent with
22 the authorised use of the land under the original lease.
- 23 (2) The validity of a dealing made or entered into with the territory
24 planning authority’s approval is not affected—
- 25 (a) by a defect or irregularity in relation to the giving of the
26 approval; or
- 27 (b) because a ground, or all grounds, for the approval had not arisen.

280 Restriction on subletting of land

- (1) A lessee must not sublease any land described in a lease without the territory planning authority's prior written approval.

Note A sublessee cannot further sublease the land under the sublease (see [Land Titles Act 1925](#), s 88E).

- (2) The territory planning authority must, in writing, approve or refuse to approve a sublease of land not later than 10 working days after the authority is asked, in writing, to approve the sublease.

- (3) The territory planning authority must not approve a sublease of land—

(a) other than in accordance with criteria prescribed by regulation; and

(b) if the sublease—

(i) is inconsistent with this Act or the [Land Titles Act 1925](#); or

(ii) allows—

(A) the extension of the initial term of the sublease; or

(B) the grant of a further sublease; and

(c) unless satisfied that, during the term of the sublease (including a declared land sublease), the sublessee will have—

(i) direct access to the subleased land from a road or road related area; or

(ii) access to the subleased land from a road or road related area by an access road or track, or in another way, that the sublessee may use for entry or exit only, without charge and at any time.

- (4) If the territory planning authority approves a sublease, the lessee must execute and give the executed sublease to the authority.

-
- 1 (5) The territory planning authority must execute and give the executed
2 sublease to the registrar-general for registration under the *Land Titles*
3 *Act 1925*.
- 4 (6) Access provided because of subsection (3) (c) (ii)—
- 5 (a) must not interfere with a building, garden or stockyard on the
6 land through which the access is provided at the time the access
7 is provided; and
- 8 (b) must be located in a way that causes as little damage to the land,
9 or inconvenience to any sublessee or the lessee of the land, as
10 possible.
- 11 (7) A regulation may prescribe—
- 12 (a) the form of a sublease; and
- 13 (b) a document that must accompany or be included in a sublease;
14 and
- 15 (c) a provision that must or must not be included in the sublease.
- 16 (8) A provision of a sublease is void if—
- 17 (a) it is inconsistent with this Act or the *Land Titles Act 1925*, to the
18 extent of the inconsistency; or
- 19 (b) it allows the extension of the initial term of the sublease; or
- 20 (c) it allows the grant of a further sublease.
- 21 (9) Nothing in this Act, by itself, creates an obligation on a lessee under
22 a sublease of land to grant the sublessee a further or new sublease.
- 23 *Note* The *Unit Titles Act 2001*, s 167AA provides for the grant of further leases
24 of units and common property if a declared land sublease is subdivided
25 by a units plan.
- 26 (10) This section does not apply to a part of land sublet under section 281
27 and section 282.

1 (11) In this section:

2 *road*—see the [Road Transport \(General\) Act 1999](#), dictionary.

3 *road-related area*—see the [Road Transport \(General\) Act 1999](#),
4 dictionary.

5 **281 Subletting part of building**

6 (1) Any part of a building on land described in a lease may, subject to the
7 lease, any sublease of the land and this Act, be sublet separately from
8 the remainder of the building.

9 (2) If a part of a building is sublet separately from the remainder of the
10 building, any part of the parcel of land with the building on it may be
11 sublet with the part of the building separately from the remainder of
12 the parcel, as long as the part of the parcel sublet adjoins the part of
13 the parcel with the building on it.

14 (3) To remove any doubt, nothing in this section prevents the subletting
15 of a whole building.

16 **282 Subletting for siting of mobile homes**

17 (1) This section applies if—

18 (a) a lease of land authorises the use of the land described in the
19 lease as a mobile home park; and

20 (b) part of the land is being used, or intended to be used, for the
21 siting of a mobile home.

22 (2) The part of the land may, subject to the lease and any sublease of the
23 land, be sublet separately from the remainder of the land.

24 (3) In this section:

25 *mobile home* means a dwelling (whether or not on wheels) capable
26 of being transferred from place to place and re-erected.

1 *mobile home park* means land used for the purpose of
2 accommodating mobile homes or caravans, and includes a caravan
3 park or camping ground.

4 **283 Land leased to be held as undivided parcel**

5 (1) The land described in a lease must at all times be held and occupied
6 by or under the lessee as 1 undivided parcel, unless section 280,
7 section 281 or section 282 provides otherwise.

8 (2) The land described in a lease may be sublet and the lease and any
9 interest in it may be assigned, transferred or mortgaged, unless a
10 provision of this chapter provides otherwise.

11 **284 Leases held by Territory not to be transferred or assigned**

12 (1) The Territory must not transfer or assign a lease if the Territory is the
13 registered proprietor of the lease.

14 (2) To remove any doubt, subsection (1) does not prevent the Territory
15 from subletting a lease if the Territory is the registered proprietor of
16 the lease.

Part 10.3 Grants of further leases

285 Grant of further leases

(1) This section applies if—

- (a) a person who is or was the lessee under a lease of land (the *old lease*) applies to the territory planning authority for the grant of another lease of the land (a *further lease*); and
- (b) neither the Territory nor the Commonwealth needs the land for a public purpose; and
- (c) either—
 - (i) before the expiry of the old lease, the lessee surrenders the old lease; or
 - (ii) the old lease expired not more than 6 months before the application for the grant of the further lease; and
- (d) if the old lease is not a residential lease—all rent due under the old lease is paid; and
- (e) if the further lease is a rural lease—
 - (i) if the further lease is a rental lease—the amount of rent determined under section 343 is payable under the further lease; or
 - (ii) in any other case—
 - (A) the amount determined under section 343 for the grant of the further lease is paid; or
 - (B) if the determination under section 343 for the grant of the further lease provides for the payment of the amount by instalments—any instalment required, under the determination, to be paid before the further lease is granted is paid; and

- 1 (f) any criteria prescribed by regulation are satisfied.
- 2 (2) For an old lease granted or arising under the *Unit Titles Act 2001*—
- 3 (a) the owners corporation for a units plan may apply on behalf of
- 4 an owner of a unit for the grant of a further lease of the unit; and
- 5 (b) for a units plan that subdivides land under a declared land
- 6 sublease—the owners corporation for the units plan may apply
- 7 for the grant of a further lease under the *Unit Titles Act 2001*,
- 8 section 167AA.
- 9 (3) The territory planning authority must grant the lessee the further lease
- 10 of the land for a term not longer than—
- 11 (a) 99 years; or
- 12 (b) for a rural lease for which a period shorter than 99 years is
- 13 determined under section 344—the shorter period.
- 14 (4) A further lease granted under this section must include a statement—
- 15 (a) if the lease is a concessional lease—that the lease is
- 16 concessional; or
- 17 (b) if the lease is not concessional—to the effect that the lease is a
- 18 market value lease.
- 19 **Examples—statement in lease**
- 20 a condition of the lease or a notation or stamp on the lease
- 21 **Examples—statement to effect that lease is market value lease**
- 22 the lease is a market value lease or the lease is not concessional
- 23 *Note* A grant must be lodged with the registrar-general under the *Land Titles*
- 24 *Act 1925* (see that *Act*, s 17 (2)).
- 25 (5) A further lease begins on the day after—
- 26 (a) the day the old lease is surrendered; or
- 27 (b) for a further lease granted on application after the expiry of the
- 28 old lease—the day after the old lease expires.

- 1 (6) If the term of a further lease granted under subsection (3) is not longer
2 than the term of the old lease, any fee payable under subsection (3)
3 for the grant of the further lease must not be more than the cost of
4 granting the further lease.

5 **286 Grant of further lease includes same authorised use**

- 6 (1) This section applies if a further lease is granted under section 285 on
7 the surrender of an existing lease.
- 8 (2) The further lease must authorise each use of the leased land, and any
9 building or other structure on the land, that the surrendered lease
10 authorised.
- 11 (3) However, subsection (2) does not apply if a person applies for a
12 change of use of land, or of a building or other structure on the land,
13 that involves a lease variation at the same time as applying for the
14 grant of the further lease.
- 15 (4) To remove any doubt, a further lease may include provisions that are
16 different from the lease that it is replacing.

17 **Example—s (4)**

18 A further lease includes a restriction on the number of dwellings that may be built
19 on the land described in the lease, and the old lease did not include a similar
20 provision.

Part 10.4 Grants of concessional leases to community organisations

287 Meaning of *community lease* and *community lease use*

(1) In this Act:

community lease means a concessional lease granted to a community organisation for 1 or more community lease uses.

community lease use means each of the following community uses:

- (a) community activity centre;
- (b) community theatre;
- (c) cultural facility;
- (d) educational establishment;
- (e) indoor recreation facility;
- (f) outdoor education establishment;
- (g) outdoor recreation facility;
- (h) place of worship;
- (i) playing field;
- (j) religious associated use;
- (k) a community use prescribed by regulation.

(2) A term used in subsection (1) has the same meaning as it has in the territory plan.

(3) In this section:

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

1 **288 Meaning of *community lease provisions***

2 In this Act:

3 ***community lease provisions***, for a community lease, means the
4 following:

- 5 (a) a provision requiring the lease to be held by a sole lessee;
- 6 (b) a provision stating the restrictions applying to the lease under
7 section 303 (Approval of dealings with concessional leases)
8 when the lease is granted;
- 9 (c) if the lease includes a building and development provision—a
10 provision stating that the provisions mentioned in
11 paragraphs (d) to (f) commence on the issue of a certificate of
12 occupancy stating that the building and development provision
13 has been complied with;
- 14 (d) if the community lease use for which the land must be used
15 involves a non-continuous service being provided on the land—
16 a provision stating the minimum requirements for how
17 frequently, and for how long, the service must be provided;
- 18 (e) a provision requiring the lessee to give the territory planning
19 authority prescribed information about the use of the land;
- 20 (f) a provision requiring the lessee to give the territory planning
21 authority reports about the use of the land;
- 22 (g) any other provision prescribed by regulation.

23 **Example—par (d)**

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

289 Grant of community lease by direct sale

- (1) The Executive may approve the grant by direct sale of a community lease if satisfied that—
- (a) the grant will achieve the objective of delivering a service that provides ongoing benefits to the community; and
 - (b) a grant by a means other than direct sale is unlikely to meet that objective to the same extent as the grant by direct sale of the lease.
- (2) If the Executive approves the grant of a community lease under subsection (1), the approval must—
- (a) state the reasons why the grant is not to be made by tender under section 291; and
 - (b) state the community lease use for which the land must be used.
- (3) A statement of reasons under subsection (2) must be published on the authority website.
- (4) If the territory planning authority grants a community lease by direct sale, the lease must include—
- (a) the community lease use for which the land must be used; and
 - (b) the community lease provisions.

Note 1 The territory planning authority may only grant a community lease if the Executive approves the grant under s (1) (see s 262 (1) (d)).

Note 2 The lease must also include a statement that the lease is a concessional lease (see s 259 (2) (a) (i)).

290 Statement of future community land for stated districts

- (1) The territory planning authority may, for a stated district, make a statement setting out the government's priorities in relation to community use of land in the district.

- 1 (2) The statement—
- 2 (a) must identify 1 or more areas of land that may be leased for
- 3 community lease uses; and
- 4 (b) for each identified area—must propose the community lease
- 5 use; and
- 6 (c) may state that the identified land is to be used only for the
- 7 proposed community lease use.
- 8 (3) A statement is a notifiable instrument.

9 **291 Grant of community lease by tender**

- 10 (1) The territory planning authority may grant a community lease by
- 11 tender only if—
- 12 (a) the land described in the lease is in an area of land identified
- 13 under section 290 (2) (a); and
- 14 (b) the land is to be used only for the community lease use proposed
- 15 under section 290 (2) (b); and
- 16 (c) the authority has given notice—
- 17 (i) identifying the land by the block, section number and
- 18 division; and
- 19 (ii) stating the community lease use for which the land must be
- 20 used; and
- 21 (d) the tender process is undertaken in the way prescribed by
- 22 regulation; and
- 23 (e) the authority is satisfied that the person to whom the lease is
- 24 granted meets the criteria prescribed by regulation; and
- 25 (f) the lease includes—
- 26 (i) the community lease use for which the land must be used;
- 27 and

1 (ii) the community lease provisions.

2 *Note* The lease must also include a statement that the lease is a
3 concessional lease (see s 259 (2) (a) (i)).

4 (2) A notice under subsection (1) (c) is a notifiable instrument.

5 (3) In this section:

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

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

8 **292 Community use reports**

9 (1) This section applies if the lessee of a community lease is required
10 under the lease to give the territory planning authority reports about
11 the use of the land described in the lease.

12 (2) The lessee must, for each financial year, prepare a report about how
13 the lessee's use of the land has benefitted the broader community
14 during the financial year.

15 (3) The report must—

16 (a) include any matter prescribed by regulation; and

17 (b) be given to the territory planning authority within—

18 (i) 3 months after the end of the financial year; or

19 (ii) any longer period allowed by the authority.

20 (4) The territory planning authority may ask the lessee for additional
21 information for the report.

22 **293 Audit of use of community lease land**

23 (1) The territory planning authority may require the lessee of a
24 community lease to commission an audit of the lessee's use of the
25 land described in the lease.

- 1 (2) The audit must be—
2 (a) paid for by the lessee; and
3 (b) undertaken by—
4 (i) an auditor appointed by the territory planning authority; or
5 (ii) if the authority decides not to appoint an auditor—an
6 auditor that is independent of the lessee; and
7 (c) undertaken in accordance with procedures decided by the
8 territory planning authority following consultation with the
9 lessee.
10 (3) The lessee must make all records relating to the lessee's use of the
11 land available to the auditor for examination within a reasonable time
12 after the auditor asks for the records.
13 (4) The territory planning authority must not require a lessee to
14 commission more than 1 audit in any 6-month period.

Part 10.5 Concessional leases

Division 10.5.1 Deciding whether leases concessional

294 Application for decision about whether lease concessional

A lessee may apply to the territory planning authority for a decision about whether a lease is a concessional lease.

295 Decision about whether lease concessional

- (1) On application under section 294, the territory planning authority must decide if the lease is a concessional lease.
- (2) However, if a person other than the lessee has a registered interest in the lease, the territory planning authority must not make a decision under subsection (1) unless the authority has—
 - (a) given written notice of the application to the person; and
 - (b) in the notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of at least 15 working days after the day the notice is given to the person; and
 - (c) considered any representations made in the time given in the notice.
- (3) If the territory planning authority is not satisfied that the lease is a concessional lease—
 - (a) the authority must decide that the lease is not concessional; and
 - (b) the lease is taken to be a market value lease.

- 1 (4) However, the territory planning authority is taken to have decided that
2 the lease is a concessional lease if the authority has not made a
3 decision on the application at the end of the period of 15 working days
4 after—
- 5 (a) the day the application is made; or
- 6 (b) if a person other than the lessee has a registered interest in the
7 lease—the day the period for making representations given in
8 the notice ends.
- 9 (5) Despite subsection (4), the territory planning authority may, within
10 20 working days after the decision under subsection (4) is taken to
11 have been made, decide that the lease is not a concessional lease.
- 12 *Note* Because a decision of the ACAT on review is taken to have been a
13 decision of the original decision-maker, the territory planning authority
14 will not be able to make a decision under s (5) if the ACAT has decided
15 an application for review of the deemed decision under s (4) (see *ACT*
16 *Civil and Administrative Tribunal Act 2008*, s 69).
- 17 (6) The territory planning authority must give written notice of the
18 decision under subsection (1) to the applicant and anyone else with a
19 registered interest in the lease to which the decision relates.
- 20 (7) The *ACT Civil and Administrative Tribunal Act 2008*, section 12
21 (When no action taken to be decision) does not apply to this section.

22 **296 Authority may decide if lease concessional on own**
23 **initiative**

- 24 (1) The territory planning authority may on its own initiative decide if a
25 lease is concessional.
- 26 (2) However, the territory planning authority must not make a decision
27 under subsection (1) unless the authority has—
- 28 (a) given written notice of the authority's intention to make the
29 decision to each person with a registered interest in the lease;
30 and

- 1 (b) in the notice, invited the person to give written representations
2 about the proposed decision to the authority at a stated address
3 by not later than the end of a stated period of at least 15 working
4 days after the day the notice is given to the person; and
- 5 (c) considered any representations made in the time given in the
6 notice.
- 7 (3) If the territory planning authority gives a notice under subsection (2),
8 the authority must make a decision under subsection (1) in relation to
9 the lease not later than 15 working days after the day the period for
10 making representations given in the notice ends.
- 11 (4) If the territory planning authority is not satisfied that the lease is a
12 concessional lease—
- 13 (a) the authority must decide that the lease is not concessional; and
14 (b) the lease is taken to be a market value lease.
- 15 (5) The territory planning authority must give written notice of the
16 decision under subsection (1) to each person with a registered interest
17 in the lease to which the decision relates.

18 **297 Review of certain decisions about concessional status of**
19 **lease**

- 20 (1) This section applies to a lease if—
- 21 (a) the lease was granted before 31 March 2008; and
- 22 (b) the lease does not state in the lease that the lease is a
23 concessional lease; and
- 24 (c) the territory planning authority made a decision that the lease is
25 concessional (the *original decision*), whether before or after 31
26 March 2008; and
- 27 (d) the original decision is stated in a memorial to the lease.
- 28 (2) The lessee of the lease may apply to the territory planning authority
29 for a review of the original decision.

- 1 (3) The territory planning authority must decide the application if
2 satisfied that—
- 3 (a) there is additional relevant information about the concessional
4 status of the lease; or
- 5 (b) there is information to indicate that the authority made a formal
6 error when it made the original decision.
- 7 (4) If subsection (3) applies, the application is taken to be an application
8 under section 294.
- 9 (5) Also, if the territory planning authority is satisfied of the matters
10 mentioned in subsection (3), it may on its own initiative, review the
11 original decision in accordance with section 296.
- 12 **298 Lodging notice of decision about concessional status of**
13 **lease**
- 14 (1) This section applies if the territory planning authority decides, or is
15 taken to have decided, under this division that a lease—
- 16 (a) is not a concessional lease; or
- 17 (b) is a concessional lease and—
- 18 (i) no application is made to the ACAT for review of the
19 decision within the time allowed for applications; or
- 20 (ii) an application for review of the decision is made and the
21 ACAT—
- 22 (A) confirms the lease is a concessional lease; or
- 23 (B) remits the matter for reconsideration by the territory
24 planning authority and the authority decides that the
25 lease is a concessional lease.

(2) The territory planning authority must lodge a notice with the registrar-general for registration under the *Land Titles Act 1925* that—

(a) if the authority decides that the lease is a concessional lease—the lease is concessional; or

(b) if the authority decides that the lease is not a concessional lease—the lease is a market value lease.

Note The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

299 Concessional status of leases

(1) This section applies to a lease if—

(a) the lease states, in the lease or a memorial to the lease, that the lease is a concessional lease; or

(b) the territory planning authority has lodged a notice that the lease is a concessional lease with the registrar-general for registration under the *Land Titles Act 1925*.

Examples—par (a)

a condition of the lease or a notation or stamp on the lease

(2) A person may rely on the statement and deal with the lease as a concessional lease.

(3) The territory planning authority must not make a decision that would change the lease's status as a concessional lease.

(4) This section is subject to the following:

(a) a review of a decision about the concessional status of a lease under section 297;

(b) a variation of the lease to remove the concessional status of the lease under division 10.5.3;

(c) an order of a court or tribunal.

- 1 **300 Non-concessional status of leases**
- 2 (1) This section applies to a lease if—
- 3 (a) the lease includes a statement, in the lease or a memorial to the
- 4 lease, to the effect that the lease is a market value lease; or
- 5 (b) the territory planning authority has lodged a notice that the lease
- 6 is a market value lease with the registrar-general for registration
- 7 under the *Land Titles Act 1925*.
- 8 **Examples—par (a)**
- 9 1 a condition of the lease or a notation or stamp on the lease that it is a market
- 10 value lease
- 11 2 a statement that the lease is not concessional
- 12 (2) A person may rely on the statement and deal with the lease as a market
- 13 value lease.
- 14 (3) The territory planning authority must not make a decision that would
- 15 change the lease's status as a market value lease.
- 16 (4) This section is subject to an order of a court or tribunal.
- 17 **301 Concessional status guidelines**
- 18 (1) The territory planning authority may make guidelines setting out
- 19 information to assist people to decide whether a lease is a
- 20 concessional lease, market value lease or possibly concessional.
- 21 (2) A person who is deciding whether a lease is a concessional lease,
- 22 market value lease or possibly concessional may take into account the
- 23 concessional lease guidelines but is not bound by the guidelines.
- 24 (3) A concessional lease guideline is a notifiable instrument.

Division 10.5.2 Restrictions on dealings with concessional leases

302 Restrictions on dealings with concessional leases

- (1) The lessee, or anyone else with an interest in a concessional lease, must not, during the term of the lease, deal with the lease without the written approval of the territory planning authority.
- (2) A dealing in relation to a lease to which this section applies that is made or entered into without the territory planning authority's approval has no effect.
- (3) However, subsection (2) does not apply to a dealing—
- (a) registered under the *Land Titles Act 1925*; or
 - (b) made under any of the following orders:
 - (i) an order of the Family Court;
 - (ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);
 - (iii) an order under the *Domestic Relationships Act 1994*, division 3.2 (Adjustment of property interests) adjusting the property interests of parties in a domestic relationship; or
 - (c) that happens by operation of, or under, bankruptcy or insolvency; or
 - (d) in any circumstances prescribed by regulation.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that *Act*, s 58).

303 Approval of dealings with concessional leases

(1) The territory planning authority must not approve a dealing under section 302 in relation to a lease unless—

(a) satisfied that the person to whom it is proposed that the lease be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given—

(i) is a person (an *eligible person*) who could be granted the concessional lease; or

(ii) for a dealing with a community lease—

(A) is a community organisation; and

(B) satisfies the criteria prescribed under section 291 (Grant of community lease by tender); or

(b) for a sublease—satisfied that the lessee, or an eligible person, continues to be the main user of the lease.

(2) In deciding whether the lessee proposing to grant a sublease, or an eligible person, continues to be the main user of the lease, the territory planning authority must consider the following:

(a) the proposed area of the sublease;

(b) the extent to which the lessee or eligible person continues to provide most of the goods, services or both to be provided from the area leased;

(c) the extent to which the use of the area proposed to be subleased will be ancillary to the permitted uses of the area that is not proposed to be subleased;

(d) the extent to which the use of the area proposed to be subleased will be complementary to the use of the area that is not proposed to be subleased.

- 1 (3) The validity of a dealing made or entered into with the territory
2 planning authority's approval is not affected—
3 (a) by a defect or irregularity in relation to the giving of the
4 approval; or
5 (b) because a ground, or all grounds, for the approval had not arisen.

6 **Division 10.5.3 Varying concessional leases to**
7 **remove concessional status**

8 **304 Removal of concessional status by variation of lease**

- 9 (1) The concessional status of a lease may only be removed by a variation
10 of the lease.
11 (2) Subsection (1) does not apply to a review of a decision about the
12 concessional status of a lease under section 297.

13 **305 Development application to remove concessional status**
14 **of lease**

- 15 (1) This section applies to a development application to vary a
16 concessional lease to remove its concessional status.
17 (2) The territory planning authority must refer the development
18 application to the Minister for decision under section 182 (Deciding
19 development applications).
20 (3) In deciding the development application under section 182, the
21 Minister must also consider the following:
22 (a) any information or documents required to accompany the
23 application under section 164 (2) (d);
24 (b) whether the Territory wishes to continue to monitor the use and
25 operation of the concessional lease by requiring approval before
26 the lease is dealt with;

- 1 (c) whether approving the application would cause any
2 disadvantage to the community, taking into account potential
3 uses of the leased land—
- 4 (i) mentioned in a statement under section 290 (Statement of
5 future community land for stated districts); or
- 6 (ii) that are consistent with the territory plan, whether or not
7 those uses are authorised by the lease;
- 8 (d) whether the Territory should buy back, or otherwise acquire, the
9 lease;
- 10 (e) whether the Territory wishes to encourage the continued use of
11 the land for an authorised use under the lease by retaining the
12 concessional status of the lease;
- 13 (f) whether varying the lease to remove its concessional status
14 would be consistent with any statement under section 290 or
15 notice under section 291 (1) (c) (Grant of community lease by
16 tender) that applies to the lease;
- 17 (g) any representation about the application received by the territory
18 planning authority and not withdrawn;
- 19 (h) the availability and leased purpose of any land to which
20 concessional leases or community uses apply in the surrounding
21 area.
- 22 (4) The development application must be for approval to vary the lease
23 to remove its concessional status only.
- 24 (5) The following provisions do not apply to the development
25 application:
- 26 (a) section 168 (When authority must refer development
27 application);
- 28 (b) section 183 (Considerations when deciding development
29 applications);
- 30 (c) section 184 (Conditional approvals);

- 1 (d) section 186 (Restrictions on development approval);
2 (e) section 187 (Development approval contrary to entity advice);
3 (f) section 188 (Referral of matter protected by the
4 Commonwealth).
5 (6) The Minister must not approve the development application without
6 the approval of the Executive.

7 **306 Development approval to remove concessional status**
8 **subject to condition**

- 9 (1) If the Minister approves a development application under section 182
10 to vary a concessional lease to remove its concessional status, the
11 approval is subject to the condition that the lessee pays the Territory
12 or a territory entity the amount worked out under section 307.

13 *Note* If the variation of the lease is not solely for the purpose of removing the
14 lease's concessional status, a person may also be required to pay a lease
15 variation charge under div 10.7.3.

- 16 (2) The amount payable is taken to be paid to the Territory or a territory
17 entity if the amount is waived by the Treasurer under the *Financial*
18 *Management Act 1996*, section 131, or part of the amount is waived
19 and the rest of the amount is paid.

20 **307 Working out amount payable to remove concessional**
21 **status**

- 22 (1) This section applies if a development application in relation to a lease
23 is subject to a condition under section 306.
24 (2) The amount payable is worked out as follows:

25
$$MV - \left(\frac{AP}{OV} \times MV \right)$$

26 *AP*, for a lease, means the amount (if any) paid for the lease at grant.

1 *MV*, for a lease, means the market value of the lease if it were a
2 market value lease.

3 *OV*, for a lease, means the market value of the lease at grant if it had
4 been a market value lease.

5 (3) To remove any doubt, an amount paid as rent under a lease is not an
6 amount paid for the lease.

7 **308 Uses under leases varied by surrender and regrant to**
8 **remove concessional status**

9 (1) This section applies to a lease varied only to remove the concessional
10 status of the lease by surrender and regrant of the lease.

11 (2) The regranted lease authorises each use of the land, and any building
12 or other structure on the land, authorised under the lease before the
13 lease was varied to remove its concessional status.

14 (3) Subsection (2) applies despite anything to the contrary in the territory
15 plan.

Part 10.6 Rent variations and relief from provisions of leases

309 Application to land rent—pt 10.6

This part does not apply to a variation of land rent in accordance with the provisions of a land rent lease.

310 Variations of rent

- (1) If the rent payable under a lease is varied in accordance with the provisions of the lease, the territory planning authority must give the lessee written notice of the variation.
- (2) A variation of rent mentioned in the notice comes into operation on—
 - (a) the day 20 working days after the day the notice is given; or
 - (b) if the lease under which the variation is made provides that the variation comes into operation on a later day—the later day.

311 Review of variations of rent

- (1) This section applies if—
 - (a) the rent payable under a lease is varied in accordance with the provisions of the lease; and
 - (b) the lease does not provide for the submission to arbitration of differences between the parties to the lease about variation of the rent.
- (2) The lessee may, not later than 20 working days after receiving the notice under section 310 (1) about the variation, ask the territory planning authority in writing to review the variation.
- (3) The making of the request does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.

- 1 (4) If the request is made in relation to a variation, the territory planning
2 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 **312 Reduction of rent and relief from provisions of lease**
- 7 (1) The territory planning authority may approve—
8 (a) a reduction of the rent payable under a lease, or of an amount
9 payable, in relation to any occupation of land; or
10 (b) the grant of relief, to a lessee or occupier of 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 territory planning 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 discharged
18 for the period approved, to the extent of the reduction or grant of relief
19 approved.
- 20 (4) An approval under subsection (1) may be conditional.
- 21 (5) If the territory planning authority approves a grant of relief to a lessee
22 or occupier under subsection (1), the authority must give the lessee or
23 occupier written notice of the reduction of rent or amount payable or
24 other grant of relief approved.

Part 10.7 Lease variations

Division 10.7.1 Lease variations—general

313 Effect subject to pt 10.8

This part has effect subject to part 10.8 (Rural leases).

Division 10.7.2 Variation of rental leases

314 Variation of rental leases

- (1) The territory planning authority must not execute a variation of a rental lease unless any rent, including additional rent, payable under the lease up to the day the variation is executed has been paid.
- (2) If the territory planning authority executes a variation of a rental lease—
 - (a) the authority must reassess the rent payable under the lease, following (as far as possible) the method provided by the rental provisions of the lease; and
 - (b) the rent payable under the lease must be adjusted in accordance with the reassessment with effect from the day the variation is executed.
- (3) Subsection (2) does not apply to a variation of—
 - (a) a rental lease—
 - (i) to reduce the rent payable to a nominal rent; or
 - (ii) otherwise affecting the rental provisions of the lease; or
 - (b) a land rent lease.

- 1 **315 Advice of rent payable on variation of lease**
- 2 (1) This section applies if—
- 3 (a) the territory planning authority approves a variation of a lease;
- 4 and
- 5 (b) the lease is a lease (other than a land rent lease) under which rent
- 6 or additional rent is payable.
- 7 (2) The territory planning authority must—
- 8 (a) work out the amount that would be payable under the lease for
- 9 rent, including additional rent, up to the day when the authority
- 10 expects the variation will be executed; and
- 11 (b) give the lessee written notice of—
- 12 (i) the amount worked out for rent, including additional rent,
- 13 under paragraph (a); and
- 14 (ii) the day up to which the amount payable for rent and
- 15 additional rent has been worked out; and
- 16 (iii) the day by which the authority requires payment of the
- 17 amount stated under subparagraph (i) to allow the variation
- 18 of the lease to be executed on the day stated under
- 19 subparagraph (ii).
- 20 **316 Application for rent payout lease variation**
- 21 (1) This section applies to the following leases:
- 22 (a) a land rent lease;
- 23 (b) a lease that is included in a class of leases prescribed by
- 24 regulation.
- 25 (2) The lessee may apply to the territory planning authority for a variation
- 26 of the lease to reduce the rent payable to a nominal rent.

317 Decision on rent payout lease variation application

- (1) Within the period prescribed by regulation after the day the territory planning authority receives an application by a lessee under section 316 (2), the authority must—
- (a) decide to vary the lease to reduce the rent payable to a nominal rent; or
 - (b) if subsection (2) stops the authority from varying the lease—
refuse to vary the lease.
- (2) The territory planning authority must not vary the lease to reduce the rent payable to a nominal rent unless—
- (a) all amounts payable to the Territory up to the day of variation of the lease for tax levied in relation to the land described in the lease have been paid; and
 - (b) for a land rent lease, all rent and other amounts payable to the commissioner for revenue under the *Land Rent Act 2008* up to the day the variation is executed in relation to the land have been paid; and
 - (c) the provisions of the lease requiring the lessee to develop the land have been complied with up to the day the variation is executed; and
 - (d) the lessee has paid the Territory an amount decided by the authority under any policy direction made under section 318.
- (3) The territory planning authority must give written notice of the decision on the application to the applicant.
- (4) If the amount mentioned in subsection (2) (d) has not been paid within 12 months from the day the notice under subsection (3) is given, the territory planning authority's decision to vary the lease is revoked.

1 (5) In this section:

2 **tax** means a tax under the following tax laws:

3 (a) division 10.7.3 (Variation of nominal rent leases);

4 (b) the *Duties Act 1999*;

5 (c) the *Land Tax Act 2004*;

6 (d) the *Rates Act 2004*.

7 **318 Policy directions for paying out rent**

8 (1) The Minister may make policy directions for section 317 (2) (d).

9 (2) A policy direction is a disallowable instrument.

10 **319 Power to decide rent payout applications deemed refused**

11 (1) This section applies if—

12 (a) an application has been made under section 316; and

13 (b) the time for deciding the application has ended; and

14 (c) the territory planning authority has not decided the application
15 under section 317.

16 (2) The territory planning authority is taken to have refused the
17 application.

18 (3) However, the territory planning authority may decide to vary the lease
19 to reduce the rent payable to a nominal rent under section 317 despite
20 subsection (2).

21 *Note* Because a decision of the ACAT on review is taken to have been a
22 decision of the original decision-maker, the territory planning authority
23 will not be able to make a decision under s (3) if the ACAT has decided
24 an application for review of the deemed decision under s (2) (see *ACT*
25 *Civil and Administrative Tribunal Act 2008*, s 69).

-
- 1 **320 Lease to be varied to pay out rent**
- 2 (1) This section applies if the territory planning authority decides to vary
- 3 a lease under section 317 to reduce the rent payable to a nominal rent.
- 4 (2) The territory planning authority must vary the lease in accordance
- 5 with the decision.
- 6 (3) The lease as varied must provide that the lessee is to pay a nominal
- 7 rent if and when that rent is demanded.
- 8 **321 No variations to extend term**
- 9 The territory planning authority must not execute a variation of a
- 10 lease to extend the term of the lease.
- 11 **322 No variation of certain leases for 5 years**
- 12 (1) This section applies to the following leases:
- 13 (a) a lease granted in accordance with section 263 (Direct sale if
- 14 single person in restricted class);
- 15 (b) a lease to which section 276 (Restriction on transfer, assignment
- 16 and parting with possession) applies.
- 17 (2) However, this section does not apply to a lease exempted by
- 18 regulation.
- 19 (3) The territory planning authority must not approve a variation of the
- 20 lease earlier than 5 years after the day the lease is granted.
- 21 (4) However, the territory planning authority may approve a variation of
- 22 the lease if it does not limit, add or remove an authorised use of the
- 23 land.
- 24 (5) In this section:
- 25 *authorised use*, of land—
- 26 (a) means a use authorised (whether expressly or by implication) by
- 27 a lease; and

- 1 (b) includes a use authorised by a lease that expired not more than
2 6 months before the use if the lease is renewed within 6 months
3 after the expiry.

4 **Division 10.7.3 Variation of nominal rent leases**

- 5 *Note* This division is a tax law under the *Taxation Administration Act 1999*.
6 As a tax law, this division is subject to provisions of that Act about the
7 administration and enforcement of tax laws generally.

8 **Subdivision 10.7.3.1 Preliminary**

9 **323 Definitions—div 10.7.3**

10 In this division:

11 ***chargeable variation***, of a nominal rent lease, means a variation of
12 the lease other than—

13 (a) a variation, if—

14 (i) the only effect of the variation is to alter a common
15 boundary between 2 or more adjoining leases; and

16 (ii) the authorised use of the land described in each adjoining
17 lease (however described) is the same; and

18 (iii) none of the adjoining leases is a rural lease; or

19 (b) a variation if the only effect of the variation is to remove the
20 lease's concessional status; or

21 (c) a variation prescribed by regulation.

22 ***gross floor area***—see the territory plan.

23 ***non-standard chargeable variation***, of a nominal rent lease, means—

24 (a) a chargeable variation that is not a standard chargeable
25 variation; or

26 (b) a standard chargeable variation if no lease variation charge is
27 determined for the variation under section 327.

original decision—see section 330 (1) (b).

reconsideration application—see section 331 (5).

standard chargeable variation, of a nominal rent lease, means a chargeable variation prescribed by regulation.

working out statement—see section 330 (2).

Subdivision 10.7.3.2 Chargeable variations of nominal rent leases

324 Lease variation charge payable for chargeable variation

(1) The territory planning authority must not execute a chargeable variation of a nominal rent lease unless—

(a) the total lease variation charge for the variation has been paid to the Territory; or

(b) a deferral arrangement in relation to the total lease variation charge has been entered into.

Note If the territory planning authority has executed a variation of a nominal rent lease, the authority must lodge a copy of the variation with the registrar-general for registration. A lease variation takes effect on registration (see [Land Titles Act 1925](#), s 72A).

(2) A lease variation charge is taken to be paid to the Territory if—

(a) the amount of the charge is waived by the Treasurer under the [Financial Management Act 1996](#), section 131 (Waiver of debts etc); or

(b) part of the amount is waived and the rest of the amount is paid.

(3) Payment of the lease variation charge, or entering into a deferral arrangement in relation to the lease variation charge, does not affect any right a person may have to apply for reconsideration under section 331.

- 1 (4) In this section:
- 2 *total lease variation charge*, in relation to a chargeable variation of a
- 3 nominal rent lease, means the following:
- 4 (a) the standard or non-standard lease variation charge applying to
- 5 the variation;
- 6 (b) less any reduction under section 334;
- 7 (c) plus any increase under section 335.

8 **325 Notice of assessment**

- 9 (1) On approval of a development application for a chargeable variation
- 10 of a nominal rent lease, the commissioner for revenue must give—
- 11 (a) a notice of assessment of the lease variation charge to the lessee;
- 12 and
- 13 (b) if the development application is made by someone other than
- 14 the lessee—a copy of the notice to the applicant.
- 15 (2) A lease variation charge is taken to be worked out—
- 16 (a) on the day the development application for the chargeable
- 17 variation is approved; or
- 18 (b) if another day is prescribed by regulation—on that day.
- 19 (3) A notice of assessment lapses on the earliest of the following—
- 20 (a) the day the lease variation charge is paid;
- 21 (b) the day the development approval of the chargeable variation
- 22 lapses.
- 23 (4) For the *Taxation Administration Act 1999*, an assessment of a lease
- 24 variation charge is a tax liability that only becomes payable if the
- 25 territory planning authority executes the variation of the lease.
- 26 *Note* The territory planning authority must not execute a variation of the lease
- 27 unless the lessee has paid the assessed lease variation charge or the
- 28 amount has been deferred (see s 324 (1)).

326 More than 1 chargeable variation

If a development approval relates to more than 1 chargeable variation of a nominal rent lease, the lease variation charge is worked out as follows:

- (a) if all the chargeable variations are standard chargeable variations for which a charge is determined under section 327—in accordance with section 327;
- (b) if all the chargeable variations are non-standard chargeable variations—in accordance with section 328;
- (c) if the chargeable variations are made up of standard and non-standard chargeable variations—as prescribed by regulation.

327 Standard chargeable variations

- (1) The lease variation charge for a standard chargeable variation of a nominal rent lease is the amount determined under this section.
- (2) The Treasurer may, after consulting with the Minister, determine a lease variation charge for a standard chargeable variation of a nominal rent lease.
- (3) In considering whether to determine a lease variation charge under this section, the Treasurer must—
 - (a) obtain advice from an accredited valuer at least once every 3 years; and
 - (b) take into account the advice; and
 - (c) comply with any other requirement prescribed by regulation.
- (4) A determination must—
 - (a) as far as is practicable, represent the average market value in relation to the standard chargeable variation; and

- 1 (b) if a standard chargeable variation increases the number of
2 dwellings permitted on the land under the lease—state an
3 amount for each additional dwelling permitted on the land under
4 the lease; and
- 5 (c) if a standard chargeable variation increases, or has the effect of
6 increasing, the maximum gross floor area of any building or
7 other structure permitted for non-residential use on the land
8 under the lease—state an amount for each additional square
9 metre of gross floor area permitted on the land under the lease.
- 10 (5) The determination must state—
11 (a) the reasons for determining the lease variation charge; and
12 (b) how the charge was determined.
- 13 (6) A determination under subsection (2) is a disallowable instrument.

14 **328 Non-standard chargeable variations**

- 15 (1) The lease variation charge for a non-standard chargeable variation of
16 a nominal rent lease is the amount worked out under this section.
- 17 (2) The commissioner for revenue works out the lease variation charge
18 for a non-standard chargeable variation of a nominal rent lease as
19 follows:

$$20 \quad LVC = (V_1 - V_2) \times 75\%$$

21 *LVC* means the lease variation charge payable for the non-standard
22 chargeable variation of the lease.

23 *V_I*—

- 24 (a) for a chargeable variation other than a consolidation or
25 subdivision—means the capital sum that the lease might be
26 expected to realise if—
27 (i) the lease were varied as proposed; and

-
- 1 (ii) the lease were genuinely offered for sale immediately after
2 the variation on the reasonable terms and conditions that a
3 genuine seller would require; and
- 4 (iii) either—
- 5 (A) the rent payable throughout the term of the lease were
6 a nominal rent; or
- 7 (B) for a variation that involves the surrender of a lease
8 and issue of a new lease—the rent payable for the
9 term of the new lease were a nominal rent; or
- 10 (b) for a chargeable variation that is a consolidation or
11 subdivision—means the capital sum that the new lease or leases
12 to be granted under the consolidation or subdivision might be
13 expected to realise if—
- 14 (i) the consolidation or subdivision were to take place as
15 proposed; and
- 16 (ii) the new lease or leases were genuinely offered for sale
17 immediately after the variation on the reasonable terms and
18 conditions that a genuine seller would require; and
- 19 (iii) the rent payable throughout the term of the new lease or
20 leases were a nominal rent.
- 21 V_2 —
- 22 (a) for a chargeable variation other than a consolidation or
23 subdivision—means the capital sum that the lease might be
24 expected to realise if—
- 25 (i) the lease were not varied during the remainder of its term;
26 and
- 27 (ii) the lease were genuinely offered for sale immediately
28 before the variation on the reasonable terms and conditions
29 that a genuine seller would require; and

- 1 (iii) the rent payable throughout the term of the lease, or lease
2 to be surrendered, were a nominal rent; or
- 3 (b) for a chargeable variation that is a consolidation or
4 subdivision—means the capital sum that the lease or leases to
5 be surrendered under the consolidation or subdivision might be
6 expected to realise if—
 - 7 (i) no consolidation or subdivision were to take place during
8 the remainder of the term of the surrendered lease or leases;
9 and
 - 10 (ii) the lease or leases were genuinely offered for sale
11 immediately before the consolidation or subdivision on the
12 reasonable terms and conditions that a genuine seller
13 would require; and
- 14 (iii) the rent payable throughout the term of the lease, or leases
15 to be surrendered, were a nominal rent.
- 16 (3) If the amount worked out as V_I is equal to or less than the amount
17 worked out as V_2 , no lease variation charge is payable.
- 18 (4) If the development approval for the relevant development application
19 relates to 2 or more non-standard chargeable variations, V_I and LVC
20 are worked out as if the non-standard chargeable variations were a
21 single non-standard chargeable variation of the lease.
- 22 **329 Non-standard chargeable variations—improvements**
- 23 (1) In working out V_I and V_2 under section 328, an improvement in
24 relation to the land described in the lease must not be taken into
25 account.
- 26 (2) However, an existing improvement by way of clearing, filling,
27 grading, draining, levelling or excavating the land may be taken into
28 account.

1 (3) In this section:

2 ***improvement***, in relation to land, means an existing or proposed
3 improvement and includes any of the following:

- 4 (a) a building or other structure on or under the land;
- 5 (b) an alteration or demolition of an existing building or other
6 structure on or under the land;
- 7 (c) the remediation of the land;
- 8 (d) earthworks, planting or other work that affects the landscape of
9 the land;
- 10 (e) anything mentioned in paragraphs (a) to (d) that is required—
- 11 (i) as a condition of a development approval; or
- 12 (ii) by a statutory approval obtained or required for a
13 development proposal; or
- 14 (iii) under an agreement between the Territory or a territory
15 entity and—
- 16 (A) the lessee; or
- 17 (B) if the lessee is not the applicant for the development
18 approval—the applicant;
- 19 (f) anything mentioned in paragraphs (a) to (d) proposed in a
20 development application in relation to a chargeable variation of
21 a nominal rent lease to be undertaken on land outside of the land
22 under the lease.

23 ***remediation***—see the [Environment Protection Act 1997](#), dictionary.

- 1 **330 Non-standard chargeable variations—working out**
2 **statement**
- 3 (1) This section applies if—
- 4 (a) a development application in relation to a non-standard
5 chargeable variation of a nominal rent lease is approved; and
- 6 (b) the lease variation charge in relation to the variation has been
7 worked out in accordance with section 328 (the *original*
8 *decision*); and
- 9 (c) the commissioner for revenue gives a notice of assessment of a
10 lease variation charge under section 325 (1); and
- 11 (d) an application has not previously been made under section 331
12 for reconsideration of the original decision.
- 13 (2) The applicant for the development application may ask the
14 commissioner for revenue for a statement (a *working out statement*)
15 explaining the commissioner's working out of the original decision.
- 16 (3) The commissioner for revenue must give the applicant a working out
17 statement within 20 working days after the day the applicant asks for
18 the statement unless—
- 19 (a) the notice of assessment contains the matters that the working
20 out statement would contain; or
- 21 (b) a document that contains the matters that a working out
22 statement would contain has already been given to the applicant.
- 23 **331 Non-standard chargeable variations—application for**
24 **reconsideration**
- 25 (1) The applicant for a development application in relation to a
26 non-standard chargeable variation of a nominal rent lease may apply
27 for reconsideration of an original decision on the earliest of the
28 following:
- 29 (a) the day the applicant receives the working out statement;

1 (b) the end of the 20-working day period mentioned in
2 section 330 (3).

3 (2) If a development approval of a development application relates to
4 more than 1 chargeable variation of a nominal rent lease, this section
5 only applies to the part of the lease variation charge that is worked
6 out for a non-standard chargeable variation.

7 *Note* The total lease variation charge for a development application that relates
8 to more than 1 chargeable variation is worked out in accordance with
9 s 326.

10 (3) This section does not apply to a reassessment of a lease variation
11 charge under section 336.

12 (4) If the applicant for the development application is not the lessee, the
13 lessee may apply for reconsideration under this section instead of the
14 applicant.

15 (5) An application for reconsideration of the original decision
16 (the *reconsideration application*) must be made not later than—

17 (a) the latest of—

18 (i) 80 working days after the day the notice of assessment
19 under section 325 (1) is given; and

20 (ii) if a later day is prescribed by regulation—that day; or

21 (b) any longer period allowed by the commissioner for revenue.

22 **332 Non-standard chargeable variations—requirements for**
23 **reconsideration application**

24 (1) A reconsideration application must be in writing and signed by—

25 (a) the lessee; and

26 (b) if the application is made by the applicant for the development
27 application who is not the lessee—the applicant.

- 1 (2) Also, the reconsideration application must—
 - 2 (a) set out the grounds on which the reconsideration is sought; and
 - 3 (b) include an independent valuation that works out the amounts
4 represented by V_1 and V_2 in section 328; and
 - 5 (c) if the applicant is given a working out statement in accordance
6 with section 330—include the statement.
 - 7 (3) If subsection (2) (c) applies, the applicant for the reconsideration must
8 give the valuer for the independent valuation the commissioner for
9 revenue's working out statement.
 - 10 (4) The independent valuation must be prepared by an accredited valuer
11 who—
 - 12 (a) was not involved in working out or advising on the original
13 decision; and
 - 14 (b) is—
 - 15 (i) agreed to by the applicant for the reconsideration and the
16 commissioner for revenue; or
 - 17 (ii) if the applicant and the commissioner cannot agree—
18 appointed in writing by a person prescribed by regulation;
19 and
 - 20 (c) satisfies any requirement prescribed by regulation.
 - 21 (5) The applicant for the reconsideration is responsible for the cost of the
22 independent valuation.
- 23 **333 Non-standard chargeable variations—reconsideration**
- 24 (1) Within 20 working days after receiving a reconsideration application,
25 the commissioner for revenue must—
 - 26 (a) reconsider the original decision; and

- 1 (b) either—
- 2 (i) make a decision in substitution for the original decision
- 3 that the commissioner could have made; or
- 4 (ii) confirm the original decision.
- 5 (2) The 20-working day period mentioned in subsection (1) may be
- 6 extended for a stated period by agreement between the commissioner
- 7 for revenue and the applicant for the reconsideration.
- 8 (3) In reconsidering the original decision, the commissioner for
- 9 revenue—
- 10 (a) must consider the independent valuation required under
- 11 section 332 (2) (b) and any other information given in the
- 12 reconsideration application; and
- 13 (b) may consider any other relevant information.
- 14 (4) The commissioner for revenue must ensure that, if the original
- 15 decision is made by the commissioner or a person on the
- 16 commissioner's behalf (the *original decision-maker*), someone other
- 17 than the original decision-maker reconsiders the decision.
- 18 (5) If the commissioner for revenue does not make a substitute decision,
- 19 or confirm the original decision, by the end of the 20-working day
- 20 period mentioned in subsection (1), or the period as extended by
- 21 agreement under subsection (2), the commissioner is taken to have
- 22 confirmed the original decision.
- 23 (6) The commissioner for revenue must give written notice of the
- 24 decision on the reconsideration to—
- 25 (a) the lessee; and
- 26 (b) if the application is made by the applicant for the development
- 27 application who is not the lessee—the applicant.

- 1 **334 Reduction of lease variation charges**
- 2 (1) The Minister may determine circumstances in which the amount of
- 3 lease variation charge applying under this part to a chargeable
- 4 variation of a nominal rent lease must be reduced.
- 5 (2) For each circumstance determined under subsection (1), the Treasurer
- 6 must determine the amount by which the lease variation charge must
- 7 be reduced.
- 8 (3) The amount must be expressed as a percentage of the lease variation
- 9 charge.
- 10 (4) A determination is a disallowable instrument.
- 11 **335 Increase of lease variation charge**
- 12 (1) The amount of lease variation charge applying under this part to a
- 13 chargeable variation of a nominal rent lease must be increased in the
- 14 circumstances, and for the amount, prescribed by regulation.
- 15 (2) Subject to any disallowance or amendment under the [Legislation Act](#),
- 16 chapter 7, the regulation commences—
- 17 (a) if there is a motion to disallow the regulation and the motion is
- 18 negated by the Legislative Assembly—the day after the day
- 19 the disallowance motion is negated; or
- 20 (b) the day after the 6th sitting day after the day it is presented to
- 21 the Legislative Assembly under that chapter; or
- 22 (c) if the regulation provides for a later date or time of
- 23 commencement—on that date or at that time.
- 24 **336 Lease variation charge—reassessment**
- 25 (1) This section applies if—
- 26 (a) a development application for approval of a chargeable variation
- 27 of a nominal rent lease is approved; and

- 1 (b) the commissioner for revenue gives a notice of assessment of a
2 lease variation charge under section 325 (1); and
- 3 (c) the territory planning authority executes a variation of the lease
4 to which the lease variation charge relates.
- 5 (2) The commissioner for revenue may reassess the lease variation
6 charge under the *Taxation Administration Act 1999*, section 9
7 (Reassessment).
- 8 (3) The commissioner for revenue must give—
- 9 (a) a notice of assessment of the lease variation charge to the lessee;
10 and
- 11 (b) if the development application in relation to the chargeable
12 variation is made by someone other than the lessee—a copy of
13 the notice to the applicant.
- 14 *Note* The assessment notice must show the amount of the reassessment and the
15 amount by which the assessment has been increased or decreased (see
16 *Taxation Administration Act 1999*, s 14 (3)).
- 17 (4) For this division, the *Taxation Administration Act 1999*, part 10
18 (Objections and reviews) applies only to a reassessment of a lease
19 variation charge under this section.

337 Taxation Administration Act—disclosure of information

21 For the *Taxation Administration Act 1999*, division 9.4 (Secrecy), a
22 tax officer under that Act may disclose information obtained under or
23 in relation to the administration of this division to the territory
24 planning authority or a person authorised by the authority to receive
25 the information.

Subdivision 10.7.3.3 Deferring lease variation charges

338 Application to defer payment of lease variation charges

- (1) An applicant for a development application for a chargeable variation of a nominal rent lease may apply to the commissioner for revenue to defer the time for payment of the lease variation charge payable under section 324 in relation to the charge.

Note Unless payment of the lease variation charge is deferred, it must be paid before the territory planning authority executes the chargeable variation (see s 324).

- (2) The applicant must give the commissioner for revenue any information the commissioner considers necessary to decide the application.

- (3) If the applicant for the development application is not the lessee, the lessee—

- (a) may apply for the deferral instead of the applicant; or
(b) must sign the deferral application.

339 Approval to defer payment of lease variation charges

- (1) The commissioner for revenue must approve an application to defer payment of a lease variation charge under section 338 if—

- (a) the total lease variation charge to be deferred is at least the amount determined by the Treasurer; and

- (b) the applicant satisfies any other criteria determined by the Treasurer; and

- (c) the applicant enters into an arrangement under the *Taxation Administration Act 1999*, section 52 (Arrangements for payment of tax) about payment of the amount of the deferred lease variation charge (a *deferral arrangement*).

Note 1 An amount payable under a deferral arrangement is a debt owing to the Territory and is a charge on the land (see *Taxation Administration Act 1999*, s 56H).

Note 2 A decision to approve an application and a decision to impose conditions under a deferral arrangement under s 340 are reviewable decisions (see *Taxation Administration Act 1999*, sch 1).

(2) A determination under subsection (1) (b) is a disallowable instrument.

(3) If the applicant for deferral is not the lessee, the lessee—

(a) may enter into the deferral arrangement instead of the applicant;
or

(b) must sign the deferral arrangement.

(4) In this section:

total lease variation charge—see section 324 (4).

340 Conditions of deferral arrangement

(1) A deferral arrangement under section 339 must—

(a) state the amount of lease variation charge that is being deferred;
and

(b) state that the deferred amount, and any accrued interest, must be paid to the commissioner for revenue not later than the earliest of the following—

(i) if stated in the deferral arrangement—the date a certificate of occupancy is issued for part of the building work for the development to which the chargeable variation relates;

(ii) the date a certificate of occupancy is issued for all of the building work for the development to which the chargeable variation relates;

(iii) 4 years from the day the chargeable variation is executed;
and

(c) include any other condition determined under subsection (2).

- 1 (2) The Treasurer may determine other conditions to which a deferral
2 arrangement is subject, including the rate of interest charged on the
3 amount payable under the arrangement.

4 *Note* There may be additional interest and penalty tax payable under the
5 [Taxation Administration Act 1999](#).

- 6 (3) A determination is a disallowable instrument.

- 7 (4) This section does not limit the [Taxation Administration Act 1999](#),
8 section 52, but any arrangement under that section about payment of
9 a deferred lease variation charge under this subdivision must not be
10 inconsistent with the conditions under subsection (1).

11 **341 Lease variation charge changed after reconsideration etc**

- 12 (1) This section applies if—

13 (a) a person enters into a deferral arrangement in relation to a lease
14 variation charge for the chargeable variation; and

15 (b) after the arrangement is entered into, the amount of lease
16 variation charge payable for the chargeable variation
17 (the *new amount*) is different to the amount of lease variation
18 charge payable at the time the arrangement was entered into
19 (the *deferred amount*) because of a reconsideration,
20 reassessment or review under this Act or the [Taxation](#)
21 [Administration Act 1999](#).

- 22 (2) The deferral arrangement applies to the new amount.

- 23 (3) If the new amount is more than the deferred amount, the
24 commissioner for revenue may, on application by the other party to
25 the deferral arrangement, vary the conditions of the deferral
26 arrangement.

- 27 (4) If the applicant for reconsideration is not the lessee—

28 (a) the lessee—

29 (i) may apply for the variation instead of the applicant; or

- 1 (ii) must sign the application; and
2 (b) if the application is approved, the lessee must sign the variation.

3 **342 Certificate of lease variation charge and other amounts**

- 4 (1) This section applies if there is a charge on land under the *Taxation*
5 *Administration Act 1999*, section 56H in relation to a lease variation
6 charge.
- 7 (2) A relevant person in relation to the land to which the lease variation
8 charge applies may apply to the commissioner for revenue for a
9 certificate that sets out the amount of—
- 10 (a) lease variation charge that remains unpaid at the date of the
11 certificate; and
- 12 (b) any interest and penalty tax payable under this division, a
13 deferral arrangement or the *Taxation Administration Act 1999*.
- 14 (3) The commissioner must give the applicant the certificate.
- 15 (4) The certificate is conclusive proof for an honest buyer for value of the
16 matters certified.
- 17 (5) For this section, the lease variation charge and other amounts payable
18 are taken to be payable immediately even though any necessary time
19 after a date or event, or the service of a notice, has not ended.
- 20 (6) In this section:
- 21 *relevant person*, in relation to land to which a lease variation charge
22 applies, means—
- 23 (a) the lessee, buyer or mortgagee of the land; or
- 24 (b) an applicant for a development application in relation to the
25 land, if the applicant is not the lessee.

Part 10.8 Rural leases

Division 10.8.1 Further rural leases

343 Amount payable for further leases—rural land

- (1) The Minister may make a determination for section 285 (1) (e) (i) or (ii) (Grant of further leases).
- (2) A determination for section 285 (1) (e) (ii) may provide that the amount payable for the grant of the lease is payable in stated instalments.
- (3) If the Minister has not made a determination under subsection (1), the amount that is taken to have been determined for a rural lease is the market value of the lease, payable as a lump sum.
- (4) A determination is a disallowable instrument.

344 Term of further leases—rural land

- (1) The Minister may make a determination for section 285 (3) (b).
- (2) However, if the national capital authority has set a maximum term for a rural lease of land in a designated area, the Minister must not determine a period under subsection (1) for a further rural lease of the land in a designated area that is longer than the maximum term set by the authority.
- (3) A determination is a disallowable instrument.

Division 10.8.2 Exceptions for rural leases

345 Definitions—div 10.8.2

In this division:

discharge amount, for a rural lease, means the discharge amount worked out as prescribed by regulation.

holding period, for a rural lease, is a period ending—

-
- 1 (a) if the discharge amount is paid—when the discharge amount is
2 paid; or
3 (b) in relation to a lease for a term of 21 years or longer—10 years
4 after the lease commences; or
5 (c) in relation to a lease for a term shorter than 21 years—at the end
6 of $\frac{1}{3}$ of the term of the lease.

7 **346 Land management agreements**

- 8 (1) This section applies to the following:
- 9 (a) the grant of a rural lease;
- 10 (b) the grant of a further rural lease;
- 11 (c) the variation of a rural lease;
- 12 (d) the approval of an assignment or transfer of a rural lease.
- 13 (2) The territory planning authority may do the things mentioned in
14 subsection (1) only if—
- 15 (a) the person to whom the lease is to be granted, assigned or
16 transferred, or the person whose lease is to be varied, has entered
17 into an agreement with the Territory about managing the rural
18 land described in the lease (a ***land management agreement***);
19 and
- 20 (b) the agreement is signed by the conservator of flora and fauna
21 and the person mentioned in paragraph (a).
- 22 (3) A land management agreement may contain a provision allowing the
23 agreement to be varied other than by agreement between the parties.
- 24 (4) The conservator of flora and fauna may make guidelines setting out
25 the requirements for land management agreements.
- 26 (5) In preparing a guideline, the conservator of flora and fauna must
27 consult the territory planning authority.
- 28 (6) A guideline is a notifiable instrument.

- 1 **347 Dealings with rural leases**
- 2 (1) This section applies to—
- 3 (a) a rural lease granted under section 259 (Granting leases); and
- 4 (b) a grant of a further rural lease.
- 5 (2) A lessee, or anyone else with an interest in the rural lease, must not
- 6 deal with the lease without the written approval of the territory
- 7 planning authority.
- 8 (3) A dealing in relation to a rural lease made or entered into without the
- 9 territory planning authority's approval has no effect.
- 10 (4) The territory planning authority must approve a dealing in relation to
- 11 a rural lease if—
- 12 (a) either—
- 13 (i) the lessee's domestic partner or child is the person to
- 14 whom—
- 15 (A) the lease is being assigned or transferred; or
- 16 (B) the land described in the lease, or part of it, is sublet;
- 17 or
- 18 (C) possession of the land described in the lease, or part
- 19 of it, is being given; or
- 20 (ii) the holding period for the lease has ended; and
- 21 (b) for an assignment or transfer of the rural lease—the person to
- 22 whom the lease is to be transferred or assigned has entered into
- 23 a land management agreement in accordance with section 346.
- 24 (5) The validity of a dealing made or entered into with the consent of the
- 25 territory planning authority is not affected—
- 26 (a) by a defect or irregularity in relation to the giving of the consent;
- 27 or

- 1 (b) because a ground, or all grounds, for the consent had not arisen.
- 2 (6) To remove any doubt, a person is not required to pay a discharge
- 3 amount more than once under this section in relation to a rural lease.
- 4 (7) In this section:
- 5 *child*, of a lessee, includes a child of the lessee's domestic partner.

6 **348 Exceptions to s 346 and s 347**

- 7 Section 346 and section 347 do not apply to the transfer or assignment
- 8 of a lease, or an interest in the lease, if—
- 9 (a) the lessee has died; or
- 10 (b) the transfer or assignment is made under any of the following
- 11 orders:
- 12 (i) an order of the Family Court;
- 13 (ii) an order of another court having jurisdiction under the
- 14 *Family Law Act 1975* (Cwlth);
- 15 (iii) an order under the *Domestic Relationships Act 1994*,
- 16 division 3.2 adjusting the property interests of the parties
- 17 in a domestic relationship; or
- 18 (c) the transfer or assignment happens by operation of, or under,
- 19 bankruptcy or insolvency.

20 **349 Delayed requirement to enter into land management**

21 **agreement**

- 22 (1) This section applies if a lease, part of the lease or an interest in the
- 23 lease, to which section 346 or section 347 applies has been transferred
- 24 or assigned to someone (the *interest holder*) who has not entered into
- 25 a land management agreement for the rural land described in the
- 26 lease, or part of the lease, or to which the interest relates.

- 1 (2) The interest holder must enter into a land management agreement for
2 the land not later than 6 months (or any extended period) after the day
3 the lease, part of the lease or interest, is transferred or assigned to the
4 interest holder.
- 5 (3) The territory planning authority may, in writing, extend the period
6 under subsection (2) for entering into a land management agreement.
- 7 **350 Certain dealings in holding period**
- 8 The territory planning authority—
- 9 (a) must not approve the subdivision of a rural lease to which
10 section 347 applies during the holding period; and
- 11 (b) may approve the consolidation of a lease to which section 347
12 applies during the holding period.

Part 10.9 Leases—improvements

351 Application—pt 10.9

This part applies to an improvement—

- (a) undertaken in a way consistent with territory law, and with any lease over the land; or
- (b) if the improvement was undertaken or acquired by the Territory or Commonwealth—for which the Territory or Commonwealth has been, or is entitled to be, paid.

352 Definitions—pt 10.9

In this part:

improvement, in relation to land, means—

- (a) a building or other structure on or under the land; or
- (b) for land described in a rural lease—
 - (i) a building or other structure on or under the land; or
 - (ii) any earthworks, planting or other work that affects the landscape of the land that is reasonably undertaken for rural purposes.

lessee, for a lease that has ended, whether by termination, surrender, end of term or otherwise, means the person who was the lessee under the lease when the lease ended.

undertaken, in relation to an improvement that is a building or other structure, means the construction of the building or other structure.

1 **353 Renewing lessee not liable to pay for improvements**

- 2 (1) This section applies if—
- 3 (a) the term of a lease expires; and
- 4 (b) there are improvements on the land described in the lease; and
- 5 (c) the lessee is granted a further lease of the land or part of it.
- 6 (2) The lessee is not liable to pay the territory planning authority for the
- 7 improvements on the land.

8 **354 Authority must pay for certain improvements**

- 9 (1) This section applies if—
- 10 (a) the term of a lease expires; and
- 11 (b) there are improvements on the land described in the lease; and
- 12 (c) there is no provision in the lease that excludes or limits the right
- 13 of the lessee to payment in relation to the improvements; and
- 14 (d) the lessee is not granted a further lease of the land, or is granted
- 15 a lease of only part of the land.
- 16 (2) The territory planning authority must pay the lessee—
- 17 (a) if no further lease of the land is granted to the lessee—the
- 18 amount decided by the authority to be the value of the
- 19 improvements on the land; or
- 20 (b) if a further lease of only part of the land is granted to the lessee—
- 21 the amount decided by the authority to be the value of the
- 22 improvements on the part of the land not leased.

23 **355 Land declared available for further lease**

- 24 (1) This section applies if—
- 25 (a) the territory planning authority must pay a lessee an amount
- 26 under section 354; and

- 1 (b) before the expiry of the term of the lease, the territory planning
2 authority declares that the land described in the lease, or part of
3 the land, is available for a further lease; and
- 4 (c) the lessee does not elect to take a further lease of the declared
5 land within 6 months after the expiry of the term of the lease.
- 6 (2) The amount of any expenditure reasonably incurred by the Territory,
7 the territory planning authority or both, in relation to the grant of a
8 lease of the land, or part of the land, to anyone else must be deducted
9 from the amount payable to the lessee under section 354.
- 10 **356 Lease surrendered or terminated**
- 11 (1) This section applies if—
- 12 (a) a lease is surrendered or terminated; and
- 13 (b) the lessee has fully complied with any provisions of the lease
14 relating to the construction of a building on the land described
15 in the lease; and
- 16 (c) there is no provision in the lease that excludes or limits the right
17 of the lessee to payment in relation to improvements on the land.
- 18 (2) Section 354 and section 355 apply in relation to the lease (so far as
19 applicable) as if the term of the lease had expired on the day the lease
20 was surrendered or terminated.
- 21 (3) However, the amount worked out under subsection (4) must be
22 deducted from any amount payable under section 354 to the lessee of
23 the surrendered or terminated lease.
- 24 (4) The territory planning authority may work out the amount of the
25 expenditure reasonably incurred by the Territory, the authority or
26 both, in relation to the surrender or termination of the lease.

- 1 **357 Withdrawal of lease or part before end**
- 2 (1) This section applies if—
- 3 (a) before the end of the term of a lease, the territory planning
- 4 authority withdraws all or part of the leased land from the lease
- 5 under a provision of the lease; and
- 6 (b) the lessee has fully complied with any provisions of the lease
- 7 relating to the construction of a building on the land; and
- 8 (c) there is no provision in the lease that excludes or limits the right
- 9 of the lessee to payment in relation to improvements on the land.
- 10 (2) Section 354 and section 355 apply in relation to the lease for the
- 11 withdrawn land, as if the term of the lease had ended on the day the
- 12 land is withdrawn.
- 13 **358 Deciding value of improvements**
- 14 (1) If compensation is payable under this part in relation to
- 15 improvements, the territory planning authority must—
- 16 (a) as soon as practicable after the assessment day decide, in
- 17 writing, the market value of the improvements on the land as at
- 18 the assessment day; and
- 19 (b) in valuing the improvements, assume that—
- 20 (i) for section 355—a further lease of the land had been
- 21 granted subject to the same provisions, and for the same
- 22 term, as the lease the term of which has expired; and
- 23 (ii) for section 356—the lease of the land had not been
- 24 terminated or surrendered; and
- 25 (iii) for section 357—the leased land had not been withdrawn
- 26 from the lease.

1 (2) In this section:

2 ***assessment day*** means—

- 3 (a) in relation to land if the term of the lease has expired—the day
4 the term expired; or
- 5 (b) in relation to land a lease of which has been terminated or
6 surrendered—the day the lease was terminated or surrendered;
7 or
- 8 (c) in relation to land that has been withdrawn from a lease—the
9 day the land was withdrawn.

10 ***market value***, in relation to improvements on land, means the amount
11 by which the improvements increase the value of the lease of the land,
12 assuming that the lease, together with the improvements, were offered
13 for sale on the open market on the day before the assessment day on
14 the reasonable terms and conditions that a genuine seller might
15 require.

1 **Part 10.10** **Surrendering and termination of**
2 **leases**

3 **359 Lessee may surrender lease**

- 4 (1) A lessee under a lease may, at any time, with the approval of the
5 territory planning authority, surrender the lease or part of the land
6 described in the lease.
- 7 (2) The territory planning authority may accept the surrendered lease or
8 land unconditionally or subject to any condition the authority
9 considers appropriate.
- 10 (3) The surrender of the lease or land does not entitle the lessee to a
11 refund or reduction of any rent paid or owing.

12 **360 Refund on lease surrender or termination**

- 13 (1) This section applies if a lease is surrendered or terminated under this
14 Act.
- 15 (2) On application by the person whose lease has been surrendered or
16 terminated, the territory planning authority may pay the person the
17 amount prescribed by regulation.
- 18 (3) A regulation may prescribe when the territory planning authority may
19 make a payment under this section.

Part 10.11 Declared subleases of land

361 Meaning of *declared land sublease*

(1) In this Act:

declared land sublease—

- (a) means a land sublease under a declared lease; and
- (b) includes any new land sublease granted by the lessee to the sublessee over the land under a surrendered or expired declared land sublease.

(2) In this section:

declared lease—see section 362 (1).

362 Declared leases

(1) The Minister and another Minister may together declare a prescribed lease to be a *declared lease* if satisfied it is in the public interest.

(2) In deciding whether it is in the public interest to make a declaration, the Ministers must consider the following:

- (a) whether making the declaration is likely to encourage development of the land under the declared lease that has a substantial benefit to the ACT community;
- (b) whether making the declaration would cause any disadvantage to the ACT community taking into account potential uses of the land under the declared lease that are consistent with the territory plan, whether or not those uses are authorised by the lease;
- (c) whether any development of part of the land under the declared lease is likely to be part of a larger development and, if so, what that development will involve;

- 1 (d) whether making the declaration is likely to encourage
2 development of the land under the declared lease that is likely to
3 substantially facilitate the achievement or development of the
4 object of the territory plan as set out in the planning strategy and
5 any relevant district strategy that applies to the land under the
6 declared lease;
- 7 (e) whether making the declaration raises a major policy issue.
- 8 (3) A declaration is a notifiable instrument.
- 9 (4) A declaration—
- 10 (a) may only be amended or revoked to correct an error and if a
11 declaration is amended, or revoked and a new declaration made,
12 the amendment or new declaration may commence
13 retrospectively; and
- 14 (b) continues to apply in relation to the lease that was a prescribed
15 lease when the declaration was made even if the lease stops
16 being a prescribed lease.
- 17 (5) The territory planning authority must give the registrar-general a copy
18 of the declaration.
- 19 (6) In this section:
- 20 *prescribed lease* means—
- 21 (a) a perpetual Crown lease held by the University of Canberra; or
- 22 (b) a perpetual Crown lease held by the Australian National
23 University prescribed by regulation.

Part 10.12 Leases—building and development provisions

Division 10.12.1 Preliminary

363 Definitions—pt 10.12

In this part:

lease includes an interest in the lease.

transfer, of a lease, means the transfer or assignment of the lease at law or in equity.

Division 10.12.2 Certificates of compliance

364 Certificates of compliance

- (1) If a building and development provision of a lease has been fully complied with, the territory planning authority must, on its own initiative or on application by the lessee, issue a certificate of compliance stating that the provision has been complied with.
- (2) If a building and development provision of a lease has been partly complied with, the territory planning authority may issue a certificate of compliance stating that the provision has been partly complied with.
- (3) A certificate of compliance issued under subsection (2) may be subject to a condition that the lessee provide security in a stated form against failure to complete stated outstanding works.

365 Certificates of compliance—Unit Titles Act leases

- (1) The territory planning authority must not issue a certificate of compliance under section 364 in relation to a building and development provision that a lease under the *Unit Titles Act 2001* is subject to unless satisfied under subsection (2).

- 1 (2) The territory planning 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 364 in relation to the provision; or
- 7 (b) that the occupier of the unit that is held under the lease will not,
- 8 as occupier, be substantially inconvenienced by works being
- 9 undertaken, or that are to be undertaken, in compliance with a
- 10 building and development provision to which the lease of the
- 11 common property or another unit contained in the same
- 12 subdivision under the *Unit Titles Act 2001* is subject.
- 13 (3) For subsection (2) (b), an occupier is *substantially inconvenienced*
- 14 by works being undertaken, or that are to be undertaken, if the works
- 15 are being, or are to be, undertaken to the common property, or another
- 16 unit, in the same stage of the development as the occupier's unit.

17 **Division 10.12.3 Building and development**

18 **provisions—transfer of land**

19 **366 Transfer of land subject to building and development**

20 **provision**

21 A lease that includes a building and development provision cannot be

22 transferred unless—

- 23 (a) the lessee has died; or
- 24 (b) the transfer is made under—
- 25 (i) an order of the Family Court; or
- 26 (ii) an order of another court having jurisdiction under the
- 27 *Family Law Act 1975* (Cwlth); or

- 1 (iii) an order under the *Domestic Relationships Act 1994*,
2 division 3.2 adjusting the property interests of the parties
3 in a domestic relationship; or
- 4 (c) the transfer happens by operation of, or under, bankruptcy or
5 insolvency; or
- 6 (d) the lessee has a certificate of compliance under section 364; or
- 7 (e) the territory planning authority has approved the transfer under
8 section 367 or section 368.

9 **367 Transfer of land subject to building and development**
10 **provision—approval generally**

- 11 (1) The territory planning authority may, in writing, approve a transfer of
12 a lease that includes a building and development provision if—
 - 13 (a) the authority is satisfied that the proposed transferee intends to
14 comply with the provision; and
 - 15 (b) the proposed transferee has given any security required by the
16 authority for compliance with the provision; and
 - 17 (c) either—
 - 18 (i) the proposed transferee has entered into a contract with the
19 proposed transferor under which the proposed transferor is
20 to build a home on the land described in the lease; or
 - 21 (ii) the authority is satisfied that 1 or more of the matters
22 mentioned in subsection (2) (a *special circumstance*)
23 applies.
- 24 (2) Each of the following is a special circumstance:
 - 25 (a) the lessee cannot, for personal reasons prescribed by regulation,
26 comply with the building and development provision;
 - 27 (b) the lessee cannot comply with the building and development
28 provision for financial reasons connected with the lease;

- 1 (c) an unforeseen major event outside the lessee's control happened
- 2 after the lessee was granted the lease, and the event has had a
- 3 demonstrable effect on the lessee's ability to develop the land
- 4 described in the lease;
- 5 (d) the transfer of the lease is—
- 6 (i) by the Territory, a territory entity, the Commonwealth or a
- 7 Commonwealth entity (an *entity*); and
- 8 (ii) within the entity's functions; and
- 9 (iii) necessary because of a change in a policy of the Territory,
- 10 the Commonwealth or the entity that affects at least 1 other
- 11 transfer.

Examples—unforeseen major events—par (c)

- 12 1 a bushfire
- 13 2 a large increase in interest rates
- 14
- 15 (3) For subsection (2) (b), a financial reason is connected with the lease
- 16 unless—
- 17 (a) the reason is that the lessee has borrowed an amount, using the
- 18 land as security, for a purpose other than the grant of the lease
- 19 or the development of the land; and
- 20 (b) the amount is used for a purpose other than to meet an expense
- 21 arising from a personal reason prescribed by regulation for
- 22 subsection (2) (a).

Examples—financial reasons not connected with lease

- 23 1 expenditure on purchase of other land
- 24 2 purchase of luxury car
- 25 3 expenditure on extended overseas holiday
- 26

368 Transfer of land subject to building and development provision—approval for first sale

The territory planning authority may, in writing, approve a transfer of a lease that includes a building and development provision if the proposed transfer is the first sale of the land by the person who provided infrastructure on the land.

369 Transfer of land subject to building and development provision—considerations for approval

In deciding whether to approve a transfer under section 367 or section 368, the territory planning authority must take into consideration any matter prescribed by regulation.

Division 10.12.4 Noncompliance with building and development provisions

370 Fee for noncompliance with building and development provision

(1) This section applies if—

- (a) a lease includes a building and development provision requiring works to be completed within a stated time; and
- (b) a certificate of occupancy has not been issued for the works; and
- (c) the works have not been completed within the stated time.

(2) The lessee must pay the territory planning authority an amount prescribed by regulation (a *noncompliance fee*) for each period during which the works are incomplete.

(3) The territory planning authority must, at the end of each period during which the works are incomplete, give the lessee written notice of the noncompliance fee payable for the period.

(4) A regulation may prescribe circumstances in which a lessee may apply for a reduction or waiver of a noncompliance fee.

- 1 (5) A lessee is taken to comply with the building and development
2 provision if the lessee pays the noncompliance fee when it is required
3 to be paid (unless the fee is waived under the *Financial Management*
4 *Act 1996*, section 131).

5 *Note* If a lessee fails to pay a noncompliance fee or complete works within a
6 new compliance time under s 371, the territory planning authority may
7 terminate the lease (see s 453).

8 **371 Authority may give notice of new compliance time**

- 9 (1) The territory planning authority may, at any time, give written notice
10 to a lessee to whom section 370 applies that the works must be
11 completed within a reasonable stated time (a *new compliance time*).
12 (2) A regulation may prescribe requirements for how the territory
13 planning authority decides a new compliance time.

Part 10.13 Licences for unleased land

372 Criteria for granting licences for unleased land

- (1) The Executive may determine criteria for the granting of licences to occupy or use unleased land.
- (2) A determination is a disallowable instrument.

373 Applications for licences for unleased land

- (1) A person may apply to the territory planning authority for a licence to occupy or use an area of unleased land.
- (2) An application must—
 - (a) state—
 - (i) the land in relation to which the licence is sought; and
 - (ii) the period for which the licence is sought; and
 - (iii) the purposes for which it is proposed that the land should be used under the licence; and
 - (b) be accompanied by the written approval of the custodian of the land to the grant of the licence.

374 Decision on licence applications for unleased land

- (1) On receiving an application under section 373, the territory planning authority may grant the applicant a licence to occupy or use the land, and any building or other structure on the land, stated in the application for the purposes and period stated in the application.
- (2) However, the territory planning authority must not grant the licence in relation to public land unless the conservator of flora and fauna agrees in writing.

1 **375 Licences—form etc**

2 A licence granted under section 374—

- 3 (a) must be in writing; and
- 4 (b) must state the period for which it is granted; and
- 5 (c) applies to the person to whom it is granted; and
- 6 (d) is subject to any conditions stated in the licence.

7 **376 Licences—when not needed**

8 A person need not hold a licence granted under section 374 to occupy
9 or use an area of unleased land if—

- 10 (a) the person holds a sign approval, work approval, or public
11 unleased land permit, to use the area under the *Public Unleased*
12 *Land Act 2013*; and
- 13 (b) the person uses the area in accordance with the approval or
14 permit; and
- 15 (c) for an occupation or use that requires development approval—
- 16 (i) the occupation or use has development approval; and
- 17 (ii) if the occupation or use has development approval subject
18 to a condition—the person is complying with the condition.

Part 10.14 Leases and licences— miscellaneous

377 Reservation of minerals

A reservation of minerals contained in a lease must be read as a reservation of all minerals and mineral substances in or on the land, including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, stone, clay, gravel and sand.

378 How land may be recovered if former lessee or licensee in possession

(1) This section applies if—

(a) a person who has been a lessee remains in possession of the land after—

(i) the term of the lease has ended; or

(ii) the lease has been surrendered or ended; or

(b) a person who has been a licensee remains in possession of the land after—

(i) the term of the licence has ended; or

(ii) the licence has been surrendered or ended.

(2) The territory planning authority may, by written notice to the person (the *unlawful occupier*), demand that the unlawful occupier give possession of the land to the authority within the reasonable period stated in the demand.

(3) If the demand is not complied with—

(a) the territory planning authority may apply to the Magistrates Court for an order that possession of the land be given to the authority; and

- 1 (b) the court may issue a warrant authorising a police officer, within
2 20 working days after the day the warrant is issued, to enter the
3 land with any reasonable assistance or force required to give
4 possession of the land to the authority.

- 5 (4) In this section:

6 *licence* means a licence granted by the Territory, the Commonwealth
7 or the territory planning authority.

8 **379 Conversion of Commonwealth leases**

- 9 (1) This section applies if—

- 10 (a) a declaration under the *Australian Capital Territory (Planning*
11 *and Land Management) Act 1988* (Cwlth), section 27 (1), that
12 specified land in the Territory is national land, is amended or
13 repealed; and
14 (b) because of the amendment or repeal of the declaration, the land
15 stops being national land; and
16 (c) a lease granted under a prescribed law, or over all or part of the
17 land, is in force immediately before the amendment or repeal of
18 the declaration.

- 19 (2) The lease is taken to be granted under this Act on the amendment or
20 repeal of the declaration.

- 21 (3) In this section:

22 *prescribed law* means—

- 23 (a) any of the following laws in effect before the law was repealed:
24 (i) the *Leases Ordinance 1918*;
25 (ii) the *City Area Leases Ordinance 1936*; or
26 (b) a law mentioned in paragraph (a) as in effect under the
27 *Australian Capital Territory National Land (Leased)*
28 *Ordinance 2022* (Cwlth).

Chapter 11 Public land

Part 11.1 Management of public land

380 Recommendations to authority about public land

- (1) This section applies to an area of unleased land.
- (2) The custodian of the area, or the conservator of flora and fauna, may, in writing, recommend to the territory planning authority that the territory plan be amended to—
 - (a) designate the area as public land and reserve it for a purpose mentioned in section 381; or
 - (b) in relation to an area already designated in the plan as public land—
 - (i) vary the boundaries of the area; or
 - (ii) vary the purpose for which the area is reserved; or
 - (iii) provide that the area is no longer public land.

381 Reserved areas of public land

Public land may be reserved in the territory plan, whether in the map or elsewhere in the plan, for any of the following purposes:

- (a) a wilderness area;
- (b) a national park;
- (c) a nature reserve;
- (d) a special purpose reserve;
- (e) an urban open space;
- (f) a cemetery or burial ground;
- (g) the protection of water supply;

- 1 (h) a lake;
- 2 (i) a sport and recreation reserve;
- 3 (j) a heritage area.

4 **382 Management of public land**

5 The custodian of an area of public land must manage the land in
6 accordance with—

- 7 (a) the management objectives applying to the area; and
- 8 (b) the public land management plan for the area.

9 **383 Management objectives for public land**

10 (1) The *management objectives* for an area of public land reserved for a
11 particular purpose are—

- 12 (a) the management objectives stated in schedule 4, part 4.2,
13 column 3 for areas of land reserved for the purpose; and
- 14 (b) the management objectives determined by the conservator of
15 flora and fauna under subsection (2).

16 (2) The conservator of flora and fauna may determine management
17 objectives for an area of public land reserved for a purpose mentioned
18 in schedule 4, part 4.2, column 2.

19 (3) A management objectives determination is a disallowable instrument.

20 (4) If there is an inconsistency between 2 management objectives stated
21 in schedule 4, part 4.2 in relation to an area of public land, the
22 objective appearing earlier in the schedule prevails to the extent of
23 the inconsistency.

24 (5) If there is an inconsistency between a management objective stated in
25 schedule 4, part 4.2, and a management objective determined by the
26 conservator of flora and fauna in relation to an area of public land,
27 the objective in the schedule prevails to the extent of the
28 inconsistency.

Part 11.2 Management plans for public land

Division 11.2.1 Public land management plans

384 Meaning of *public land management plan*

(1) In this Act:

public land management plan, for an area of public land, means—

- (a) if the area is a reserve—a reserve management plan for the area;
or
- (b) if the area is not a reserve—a land management plan for the area.

Note 1 Reserves include wilderness areas, national parks, nature reserves, catchment areas and other prescribed areas of public land.

Note 2 Public land that is not a reserve may include special purpose reserves, urban open spaces, cemeteries, lakes, sport and recreation reserves and heritage areas.

(2) In this section:

reserve—see the [Nature Conservation Act 2014](#), section 169.

reserve management plan, for a reserve—see the [Nature Conservation Act 2014](#), section 175.

Note Under the [Nature Conservation Act 2014](#), s 177, the custodian of a reserve must follow the process in that Act for preparing a draft reserve management plan for the reserve.

Division 11.2.2 Land management plans

385 Draft land management plan—custodian to prepare

(1) The custodian of an area of public land must prepare a document (a *draft land management plan*) for the area that—

- (a) identifies the area; and

- 1 (b) describes how the management objectives for the area are to be
2 implemented or promoted in the area.
- 3 (2) In preparing a draft land management plan, the custodian must
4 consult—
- 5 (a) the conservator of flora and fauna; and
6 (b) the territory planning authority; and
7 (c) the environment protection authority.
- 8 **386 Draft land management plan—public consultation**
- 9 (1) If the custodian of an area of public land prepares a draft land
10 management plan for the area, the custodian must also prepare a
11 notice (a *consultation notice*) about the draft plan.
- 12 (2) If the custodian publishes a consultation notice about the draft plan—
- 13 (a) anyone may make a written submission to the custodian about
14 the draft plan; and
- 15 (b) submissions may be made to the custodian within 6 weeks after
16 the day the consultation notice is published on the authority
17 website (the *consultation period*); and
- 18 (c) a person making a submission may, in writing, withdraw the
19 submission at any time.
- 20 (3) A consultation notice must—
- 21 (a) state the matters mentioned in subsection (2); and
22 (b) include the draft plan; and
23 (c) be published on the authority website.

-
- 1 (4) If the custodian receives a submission about the draft plan, the
2 custodian must make a copy of the submission available on the
3 authority website until—
- 4 (a) the Minister approves or rejects the draft land management plan;
5 or
6 (b) the submission or draft land management plan is withdrawn.
- 7 **387 Draft land management plan—revision and submission to**
8 **Minister**
- 9 (1) If the consultation period for a draft land management plan has ended,
10 the custodian of the area of public land must—
- 11 (a) consider any submissions received during the consultation
12 period; and
- 13 (b) make any revisions to the draft plan that the custodian considers
14 appropriate.
- 15 (2) The custodian must then submit the draft plan to the Minister for
16 approval.
- 17 (3) The draft plan must be accompanied by—
- 18 (a) copies of all submissions received during the consultation
19 period; and
- 20 (b) a report—
- 21 (i) setting out the issues raised in any submissions given to the
22 custodian during the consultation period for the draft plan;
23 and
- 24 (ii) if the conservator of flora and fauna or the territory
25 planning authority made a submission during the
26 consultation period recommending a change to the draft
27 plan and the custodian did not revise the draft plan to
28 incorporate the change—explaining why the custodian did
29 not make the recommended change.

388 Draft land management plan—referral to Legislative Assembly committee

- (1) This section applies if the custodian of an area of public land submits a draft land management plan to the Minister for approval.
- (2) The Minister must, not later than 5 working days after the day the Minister receives the draft plan, refer the following to the relevant Assembly committee:
 - (a) the draft plan;
 - (b) the accompanying documents mentioned in section 387 (3).
- (3) The committee must consider the draft plan and accompanying documents and either—
 - (a) recommend that the Minister approves the draft plan; or
 - (b) make another recommendation about the draft plan.
- (4) The committee must tell the Minister about the recommendation and refer the draft plan back to the Minister.

389 Draft land management plan—committee to report

- (1) This section applies if the Minister has referred a draft land management plan to the relevant Assembly committee under section 388.
- (2) After the committee refers the draft plan back to the Minister, the Minister must take action under section 390 in relation to the draft plan.
- (3) If the committee has not referred the draft plan back to the Minister within 6 months after the day the draft plan was given to the committee, the Minister may take action under section 390 in relation to the draft plan.

390 Draft land management plan—Minister to approve, return or reject

(1) This section applies if—

- (a) the relevant Assembly committee refers a draft land management plan back to the Minister under section 388 (4); or
- (b) the Minister decides, under section 389 (3), to take action under this section.

(2) If the committee has made a recommendation about the draft plan, the Minister must consider the recommendation.

(3) The Minister must, not later than the required time—

- (a) approve the draft plan; or
- (b) return the draft plan to the custodian and direct the custodian to take 1 or more of the following actions in relation to it:
 - (i) if the committee has made a recommendation about the draft plan—consider the recommendation;
 - (ii) undertake stated further consultation;
 - (iii) consider a revision suggested by the Minister;
 - (iv) revise the draft plan in a stated way; or
- (c) reject the draft plan.

(4) In this section:

required time means 45 working days after—

- (a) if subsection (1) (a) applies—the day the committee tells the Minister about the recommendation under section 388 (4); or
- (b) if subsection (1) (b) applies—the end of the 6 month period mentioned in section 389 (3); or
- (c) if section 392 applies—the day the custodian resubmits the plan to the Minister.

- 1 **391 Land management plan—effect of Minister’s approval**
- 2 (1) A draft land management plan approved by the Minister under
- 3 section 390 (3) (a) or section 394 (3) (a) is a *land management plan*.
- 4 (2) A land management plan is a disallowable instrument.
- 5 **392 Draft land management plan—return to custodian**
- 6 (1) This section applies if the Minister returns a draft plan to a custodian
- 7 with a direction under section 390 (3) (b).
- 8 (2) The custodian must—
- 9 (a) give effect to the direction; and
- 10 (b) resubmit the draft plan to the Minister for approval.
- 11 (3) The Minister must make a decision about the draft plan in accordance
- 12 with section 390 (3).
- 13 **393 Draft land management plan—rejection by Minister**
- 14 (1) If the Minister rejects a draft land management plan under
- 15 section 390 (3) (c), the Minister must prepare a notice stating that the
- 16 draft plan is rejected (a *rejection notice*).
- 17 (2) A rejection notice must be published on the authority website.
- 18 **394 Land management plan—minor amendments**
- 19 (1) This section applies if—
- 20 (a) a land management plan for an area of public land is in force
- 21 (the *existing plan*); and
- 22 (b) the custodian of the land considers that minor amendments to
- 23 the existing plan are appropriate.
- 24 (2) The custodian—
- 25 (a) may prepare a new draft land management plan for the area,
- 26 incorporating the minor amendments into the existing plan; and

- 1 (b) need not comply with the requirements in this part; and
2 (c) may submit the new draft plan to the Minister for approval.
- 3 (3) If the custodian submits a new draft land management plan to the
4 Minister for approval, the Minister must—
- 5 (a) approve the new draft plan; or
6 (b) reject the new draft plan.
- 7 *Note* An amended land management plan is a land management plan for the
8 purposes of s 391.
- 9 (4) In this section:
- 10 ***minor amendment***, of a land management plan for an area of public
11 land, means an amendment that will improve the effectiveness or
12 technical efficiency of the plan without changing the substance of the
13 plan.
- 14 **Examples**
- 15 1 minor correction to improve effectiveness
16 2 omission of something redundant
17 3 technical adjustment to improve efficiency
- 18 **395 Land management plan—custodian to implement**
- 19 If a land management plan is in force for an area of public land, the
20 custodian of the land must take reasonable steps to implement the
21 plan.
- 22 **396 Land management plan—review**
- 23 (1) This section applies if a land management plan is in force for an area
24 of public land.
- 25 (2) The custodian of the land must report to the Minister about the
26 implementation of the plan at least once every 5 years.

- 1 (3) The custodian of the land must review the plan—
2 (a) every 10 years after the plan commences; and
3 (b) at any other time requested by the Minister.
4 (4) However, the Minister may extend the time for conducting a review
5 under subsection (3) (a).
6 (5) In undertaking a review, the custodian must consult the conservator
7 of flora and fauna.

Part 11.3 Public land—leases and miners' rights

397 Leases of public land

- (1) This section applies to—
- (a) public land; and
 - (b) future public land during the defined period.
- (2) The territory planning authority may grant a lease of an area of public land only if—
- (a) the lease is recommended, in writing, by the conservator of flora and fauna and the custodian of the land; and
 - (b) the area is not reserved under the plan as a wilderness area.
- (3) The territory planning authority may, during the defined period, grant a lease of an area of future public land only if—
- (a) the lease is recommended, in writing, by the conservator of flora and fauna and the custodian of the land; and
 - (b) the area is not proposed to be reserved as a wilderness area in a draft major plan amendment designating the land to become public land.
- (4) In this section:

defined period, in relation to future public land, means the period of interim effect under section 62 of a draft major plan amendment designating the land to become public land.

future public land means land designated to become public land in a draft major plan amendment publicly notified under section 61.

398 Miners' rights in relation to public land

A miner's right must not be granted in relation to public land.

1 **Chapter 12** **Development offences and**
2 **controlled activities**

3 **Part 12.1** **Development offences**

4 **399** **Offence to develop without approval**

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

11 Maximum penalty:

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

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

- 15 (a) the person undertakes development without development
- 16 approval; and
- 17 (b) the development requires development approval; and
- 18 (c) the person is reckless about whether the development requires
- 19 development approval.

20 Maximum penalty: 1 000 penalty units.

- 21 (3) A person commits an offence if—

- 22 (a) the person undertakes development without development
- 23 approval; and
- 24 (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—
- 12 (a) that before undertaking the development the defendant took
13 reasonable steps to find out whether the development required
14 development approval; or
- 15 (b) that—
- 16 (i) an exemption assessment D notice was issued before, but
17 not more than 3 months before, the day the defendant
18 started to undertake the development, stating that the
19 development was an exempt development under
20 section 143; and
- 21 (ii) the defendant was not aware, and could not reasonably
22 have been aware, that the notice was incorrect; or
- 23 (c) that—
- 24 (i) before the day the defendant started to undertake the
25 development, a building approval or approval of amended
26 building work plans under the *Building Act 2004* for which
27 development approval was required was issued; and

- 1 (ii) the building work was undertaken when the building
2 approval, or the approval for the amended plans, was in
3 force; and
- 4 (iii) the defendant was not aware, and could not reasonably
5 have been aware, that the building approval, or the
6 approval of the amended plans, should not have been
7 issued without development approval.
- 8 *Note* See the [Building Act 2004](#), s 28 (for issuing of building approvals) and
9 s 32 (for amendment of approved plans).
- 10 (7) A proceeding under this part is not affected by the making of an
11 application under section 212 (Development applications for
12 development undertaken without approval), or the approval of the
13 application, whether or not the proceeding starts before the
14 application is made or approved.
- 15 (8) To remove any doubt, this section does not apply to development that
16 is lawful because of section 403 or section 404.
- 17 *Note* A person also commits an offence if the person occupies or uses, or
18 allows someone else to occupy or use, a building, or part of a building, if
19 a certificate of occupancy has not been issued for the building or part of
20 the building (see [Building Act 2004](#), s 76 (1)).

21 **400 Offence to undertake prohibited development**

- 22 (1) A person commits an offence if—
- 23 (a) the person undertakes development; and
- 24 (b) the development is prohibited; and
- 25 (c) the person knows that the development is prohibited.
- 26 Maximum penalty:
- 27 (a) for an individual—2 000 penalty units; or
- 28 (b) for a corporation—2 500 penalty units.

- 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 154 and s 401 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 that
20 is lawful—
21 (a) because of section 401, section 403 or section 404; or
22 (b) because it is in accordance with a development approval granted
23 on an application mentioned in section 154 (2).

401 Development authorised by approval before prohibition

(1) This section applies if—

- (a) a person undertakes development; and
- (b) the development is in accordance with a development approval given in relation to the development; and
- (c) the development becomes prohibited.

(2) Section 400 (1) to (4) does not apply to the development if it is undertaken in accordance with the development approval, despite any other provision of this Act.

Note The development may still need building approval, or further building approval, under the [Building Act 2004](#).

402 Offence to develop other than in accordance with approval

(1) A person commits an offence if—

- (a) the person undertakes development; and
- (b) the development contravenes the development approval for the development.

Maximum penalty: 60 penalty units.

(2) An offence against subsection (1) is a strict liability offence.

Note A person contravenes an approval if the person contravenes a condition of the approval.

403 Development previously exempt—non-use

(1) This section applies if—

- (a) a development, other than a development that is a use, is exempt from requiring development approval under a regulation; and
- (b) a person undertakes, or begins, the development; and

1 (c) after the person undertakes or begins the development, the
2 development stops being exempt because of an amendment of
3 this Act.

4 (2) The development is lawful despite any other provision of this Act.

5 **404 Development previously exempt—use**

6 (1) This section applies to a use of land, or of a building or other structure
7 on land, if the use—

8 (a) was an exempt development when it began; and

9 (b) is authorised by—

10 (i) a lease for the land (the *affected lease*); or

11 (ii) a licence under this Act; or

12 (iii) a public unleased land permit under the *Public Unleased*
13 *Land Act 2013*; or

14 (iv) a sign approval or work approval under the *Public*
15 *Unleased Land Act 2013*; or

16 (v) section 272 (Use of land for leased purpose); and

17 (c) stops being exempt because of an amendment of this Act.

18 (2) Also, this section applies in relation to a use of land, or of a building
19 or other structure on land, even if 1 or more of the following apply in
20 relation to the use:

21 (a) the use is not continuous;

22 (b) someone deals with the affected lease;

23 (c) a further lease is granted for the affected lease on application
24 under section 285 (Grant of further leases), whether the grant
25 happens immediately after the expiry of the affected lease or
26 otherwise.

27 *Note Deal*, with a lease—see the dictionary.

- 1 (3) However, this section does not apply in relation to the use of land, or
2 of a building or other structure on land, if—
- 3 (a) the affected lease is surrendered (other than under section 285)
4 or terminated; or
- 5 (b) the use is authorised by a relevant authorisation and the relevant
6 authorisation ends—
- 7 (i) whether on expiry or otherwise; and
8 (ii) even if renewed; or
- 9 (c) the affected lease expires and no application is made under
10 section 285 for a further lease.
- 11 *Note* A person may apply for the grant of a further lease not later than
12 6 months after the expiry of the affected lease (see s 285 (1) (c)).
- 13 (4) The use of the land, building or other structure is lawful while
14 authorised by the lease, licence, permit, approval or section 272,
15 despite any other provision of this Act.
- 16 (5) In this section:
- 17 *relevant authorisation* means—
- 18 (a) a licence under this Act; or
- 19 (b) a public unleased land permit under the *Public Unleased Land*
20 *Act 2013*; or
- 21 (c) a sign approval or work approval under the *Public Unleased*
22 *Land Act 2013*.

23 **405 Development that becomes exempt**

- 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) If the development becomes an exempt development, the
2 development is taken to have been an exempt development since the
3 start of the development.

4 (3) A proceeding under this part is not affected by subsection (2),
5 whether or not the proceeding starts before the development becomes
6 exempt.

7 **406 Victimisation**

8 (1) A person (the *first person*) commits an offence if the first person
9 causes or threatens to cause a detriment to someone else (the *other*
10 *person*) because—

11 (a) the other person has made a complaint under part 12.2
12 (Complaints about controlled activities); or

13 (b) the first person believes that the other person has made, or
14 intends to make, a complaint under part 12.2.

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

17 (2) A person commits an offence if the person threatens or intimidates
18 someone else with the intention of causing the other person—

19 (a) not to make a complaint under part 12.2; or

20 (b) to withdraw a complaint made under part 12.2.

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

Part 12.2 Complaints about controlled activities

407 Meaning of *complainant*—pt 12.2

In this part:

complainant—see section 410 (1) (b).

408 Meaning of *controlled activity*

In this Act:

controlled activity means—

- (a) an activity mentioned in schedule 5; or
- (b) an activity, including an activity under another Act, prescribed by regulation.

409 Complaints about controlled activities

- (1) Anyone who believes a person was, is or will be undertaking a controlled activity may complain to the territory planning authority.
- (2) The following are taken to be complaints made under this section:
 - (a) notice of a contravention given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work);
 - (b) a complaint referred to the territory planning authority under the *Construction Occupations (Licensing) Act 2004*, section 123 (Action after investigating complaint).

1 **410 Form of complaints**

- 2 (1) A complaint must—
- 3 (a) be in writing; and
- 4 (b) include the name and address of the person making the
- 5 complaint (the *complainant*); and
- 6 (c) identify the conduct complained about.
- 7 (2) However, the territory planning authority—
- 8 (a) may accept a complaint for consideration even if it does not
- 9 comply with subsection (1); and
- 10 (b) must accept a complaint for consideration even if it does not
- 11 comply with subsection (1) if the complaint is notice given
- 12 under the *Building Act 2004*, section 50A (Notification by
- 13 certifier of possible noncompliant site work).
- 14 (3) If the territory planning authority accepts a complaint that is not in
- 15 writing, the authority must ask the complainant to put the complaint
- 16 in writing unless there is a good reason for not doing so.

17 **411 Withdrawal of complaints**

- 18 (1) A complainant may withdraw their complaint at any time by written
- 19 notice to the territory planning authority.
- 20 (2) If the complainant withdraws the complaint, the territory planning
- 21 authority—
- 22 (a) need take no further action on the complaint; but
- 23 (b) may continue to act on the complaint if the authority considers
- 24 it appropriate to do so.
- 25 (3) Also, if the complainant withdraws the complaint, the territory
- 26 planning authority need not report to the complainant under
- 27 section 415 (Action after investigating complaints).

412 Additional information about complaints

- (1) The territory planning authority may require a complainant to give the authority additional information about the complaint at any time.

Examples

- 1 whether a complaint is about controlled activity that was, or is being, undertaken
 - 2 the grounds on which the complainant alleges a controlled activity has happened or is happening
- (2) The territory planning authority must give the complainant a reasonable period of time within which the requirement is to be satisfied and may extend that period.
- (3) If the complainant does not comply with the requirement, the territory planning authority may take additional action in relation to the complaint.

413 Investigation of complaints

The territory planning authority must take reasonable steps to investigate each complaint made in accordance with section 410 (Form of complaints).

Note A person may be required to give information to the authority for the administration or enforcement of this Act (see s 470).

414 Use of information relating to complaints

The territory planning authority may use information in a complaint, or information found during the investigation of a complaint, in deciding whether to take any action under this chapter.

Note The territory planning authority must notify a complainant about the action it decides to take (see s 415 (2) (b)).

415 Action after investigating complaints

(1) After investigating a complaint made under this part, the territory planning authority must do 1 or more of the following:

- (a) if satisfied that no further action is necessary in relation to the complaint—give the complainant notice under subsection (2) (b) and take no further action in relation to the complaint;
- (b) if satisfied that the complaint can be more appropriately dealt with by another entity—refer the complaint to the other entity under section 418;

Examples

- 1 the complaint is about a potential fire hazard and would be better dealt with by the emergency service
- 2 the complaint is about a leasehold that is unclean because leftover chemicals are stored on it and would be better dealt with by the environment protection authority
- 3 the complaint is about an amenity impact caused by litter at an open private place and would be better dealt with by the administrative unit responsible for administering the [Litter Act 2004](#)
- (c) if satisfied that the complaint contains evidence that suggests that a ground for occupational discipline exists in relation to a construction occupations licensee—refer the complaint to the construction occupations registrar;
- (d) if the authority requires information under section 470—give someone an information requirement notice;
- (e) take action under part 12.3 (Controlled activity orders) in relation to the conduct complained about;
- (f) if grounds exist under a regulation to issue an infringement notice in relation to the conduct complained about—issue an 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 undertake rectification work under
3 part 12.4 (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 12.5 (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 Supreme
11 Court for an injunction under part 12.6 (Injunctions and
12 termination of leases and licences) in relation to the conduct;
- 13 (j) take action under part 12.6 to terminate a lease or licence;
- 14 (k) take any other action the authority considers appropriate.
- 15 (2) The territory planning authority must—
- 16 (a) consider any guidelines under section 416 when taking action
17 under this section; and
- 18 (b) give the complainant written notice about what the authority
19 proposes to do under subsection (1).
- 20 (3) The territory planning authority may take action under
21 subsection (1) (c) to (k) even if—
- 22 (a) the authority is not acting on a complaint; or
23 (b) the complaint is withdrawn.
- 24 (4) In this section:
- 25 ***construction occupations licensee***—
- 26 (a) means a person licensed under the *Construction Occupations*
27 *(Licensing) Act 2004*; and
- 28 (b) in relation to conduct, includes a person licensed under that Act
29 when the conduct happened.

ground for occupational discipline, in relation to a construction occupations licensee—see the *Construction Occupations (Licensing) Act 2004*, section 55.

rectification work—see section 432.

416 Guidelines for taking action on complaints

- (1) The territory planning authority may make guidelines about the action that may be taken in relation to complaints under this part and the circumstances in which the action may be taken.
- (2) A guideline is a notifiable instrument.

417 No further action on complaints under s 415 (1) (a)

In considering whether no further action is necessary in relation to a complaint, the territory planning authority must consider whether the complaint—

- (a) lacks substance; or
- (b) is frivolous, vexatious or dishonest; or
- (c) has been adequately dealt with.

Examples—par (a)

- 1 the conduct complained about is not a controlled activity
- 2 the conduct complained about has development approval
- 3 the conduct complained about did not happen

Note The authority may take no further action on a complaint for other reasons, eg if the complainant has not complied with a requirement made under s 412 (see s 412 (3)) or if the authority considers it is appropriate after considering the guidelines under s 416.

- 1 **418 Referral of complaints under s 415 (1) (b)**
- 2 The territory planning authority refers a complaint to another entity
- 3 by giving the other entity—
- 4 (a) a copy of the complaint or a summary of the information
- 5 provided in the complaint; and
- 6 (b) any information relating to the complaint that the authority
- 7 considers may be helpful to the entity; and
- 8 (c) a statement about why the authority considers that the entity is
- 9 more appropriate to deal with the complaint than the authority.

Part 12.3 Controlled activity orders

419 Definitions—pt 12.3

In this part:

complainant—see section 410 (1) (b).

ongoing controlled activity order—see section 424 (1).

show cause notice—see section 421 (1).

420 Controlled activity orders

The territory planning authority may make an order (a *controlled activity order*) directed to 1 or more of the following:

- (a) the lessee or occupier of premises where a controlled activity was, is being, or will be, undertaken;
- (b) anyone by whom or on whose behalf a controlled activity was, is being, or will be, undertaken.

421 Notice of intention to make controlled activity order

- (1) If the territory planning authority proposes to make a controlled activity order, the authority must give written notice of the authority's intention to make the order (a *show cause notice*) to—

- (a) each person to whom the authority intends to direct the order; and
- (b) if the authority does not intend to direct the order to the lessee or occupier of the premises in relation to which the order applies—the lessee or occupier of the premises.

- (2) The show cause notice must—

- (a) describe the controlled activity to which the notice relates; and
- (b) name each person to whom the authority intends to direct the order; and

- 1 (c) if the controlled activity is the subject of a complaint made under
2 part 12.2—attach a copy of the complaint.
- 3 (3) Also, the show cause notice—
- 4 (a) must state that a recipient of the notice may, not later than
5 10 working days after the day the territory planning authority
6 gives the notice, give the authority written reasons explaining
7 why the order should not be made; and
- 8 (b) may include any other information that the authority considers
9 appropriate.
- 10 (4) A recipient of a show cause notice may apply to the territory planning
11 authority for an extension of the time mentioned in subsection (3) (a).
- 12 (5) The territory planning authority may extend the time mentioned in
13 subsection (3) (a) if satisfied that it would be appropriate taking into
14 account the reasons given in the application.

15 **422 Time for making controlled activity order**

- 16 (1) If the territory planning authority gives a show cause notice and does
17 not make the controlled activity order within the time prescribed by
18 regulation, the authority must give a new show cause notice before
19 making the order.
- 20 (2) However, the chief planner may extend the time for making a
21 controlled activity order.
- 22 (3) The chief planner must not delegate the function in subsection (2).

23 **423 Decision on proposed controlled activity order**

- 24 (1) In deciding whether to make a controlled activity order, the territory
25 planning authority must consider any reasons given in response to the
26 show cause notice.
- 27 (2) The territory planning authority may direct the order to a person
28 named in the show cause notice as a person to whom the authority
29 intends to direct the order.

(3) If the territory planning authority considers that the order would be more appropriately directed to the person mentioned in section 421 (1) (b), the authority—

(a) must give a new show cause notice to that person; and

(b) may consider any reasons given in response to the earlier show cause notice when deciding whether to make an order directed to that person.

424 Ongoing controlled activity orders

(1) The territory planning authority may make a controlled activity order (an *ongoing controlled activity order*) that—

(a) remains in force for a stated period of 2 or more years, but not longer than 5 years; and

(b) cannot be revoked on application by the person to whom the order is directed.

(2) However, the territory planning authority must not make an ongoing controlled activity order unless—

(a) the controlled activity to which the order relates is failing to keep a leasehold clean; and

(b) the order is directed to a named person; and

(c) each person to whom the order is directed has contravened 2 or more controlled activity orders relating to failing to keep the leasehold clean; and

(d) at least 2 of the contraventions by each person happened in the period of 5 years ending on the day the ongoing controlled activity order is made.

Example—order not directed to named person

an order directed to the occupier of the premises at 123 Licorice Street

- 1 **425 Content of controlled activity orders**
- 2 (1) A controlled activity order must state the following:
- 3 (a) that it is a controlled activity order under this Act made by the
- 4 territory planning authority;
- 5 (b) the name of each person to whom the order is directed;
- 6 (c) the terms of the order and the address of the premises in relation
- 7 to which the order applies;
- 8 (d) the grounds on which the order is made;
- 9 (e) when the order takes effect;
- 10 (f) for an order other than an ongoing controlled activity order—
- 11 (i) the period for compliance with the order; and
- 12 (ii) when the order ends (including, for example, on the
- 13 happening of an event stated in the order);
- 14 (g) for an ongoing controlled activity order—
- 15 (i) when the order ends; and
- 16 (ii) that the order cannot be revoked on application;
- 17 (h) that contravention of a controlled activity order is an offence
- 18 under this Act.
- 19 (2) A controlled activity order must also state that the order operates until
- 20 it is revoked or ends in accordance with the order.
- 21 (3) A controlled activity order may direct anyone to whom it is directed
- 22 to do 1 or more of the following:
- 23 (a) not begin a development without development approval;
- 24 (b) not undertake a development without development approval;
- 25 (c) comply with a lease provision or development agreement;

- 1 (d) restore any land, or a building or other structure on the land, that
2 has been altered, damaged or fallen into disrepair in breach of a
3 lease provision or development agreement;
- 4 (e) comply with the terms of a development approval to undertake
5 a development;
- 6 (f) undertake a development in accordance with a condition under
7 the development approval for the development;
- 8 (g) demolish a building or other structure, or a part of a building or
9 other structure, that has been constructed without development
10 approval or permission required under a territory law;
- 11 (h) demolish a building or other structure, or a part of a building or
12 other structure, that encroaches onto, over or under unleased
13 land without approval granted under a territory law;
- 14 (i) restore any land, building or other structure that has been altered
15 without development approval or permission required under a
16 territory law;
- 17 (j) replace with an identical building or other structure any building
18 or other structure that has been demolished without development
19 approval or permission required under a territory law;
- 20 (k) apply for development approval for a building or other structure,
21 or part of a building or other structure, that has been constructed
22 without development approval;
- 23 (l) clean up a leasehold and keep it clean;
- 24 (m) if the person to whom the order is directed is bound by a land
25 management agreement—comply with the land management
26 agreement;
- 27 (n) keep from doing anything that is a controlled activity whether or
28 not a controlled activity order has been, or could be, made under
29 paragraphs (a) to (m).

- 1 **426 Notice of making of controlled activity orders**
- 2 (1) If the territory planning authority makes a controlled activity order,
- 3 the authority must give notice of the making of the order to the
- 4 following:
- 5 (a) each person to whom the order is directed;
- 6 (b) if the order is made in response to a complaint under part 12.2—
- 7 the complainant;
- 8 (c) the lessee or occupier of the premises in relation to which the
- 9 order applies;
- 10 (d) the registrar-general;
- 11 (e) if the order relates to the pruning of a protected tree—the
- 12 conservator of flora and fauna;
- 13 *Note* For restrictions on pruning etc of protected trees, see the [Tree](#)
- 14 [Protection Act 2005](#).
- 15 (f) anyone else whose interests the authority believes are adversely
- 16 affected by the order.
- 17 (2) If a person is given a notice under section 501 (Reviewable decision
- 18 notices) in relation to the making of a controlled activity order, the
- 19 person need not be given a separate notice under this section in
- 20 relation to the making of the order.
- 21 (3) In this section:
- 22 *protected tree*—see the [Tree Protection Act 2005](#), section 8.

1 **427 Who is bound by a controlled activity order**

- 2 (1) A controlled activity order binds each person to whom it is directed.
- 3 (2) If a controlled activity order binds the lessee of the premises to which
- 4 the order applies, unless the order otherwise provides, the order also
- 5 binds anyone who becomes the lessee of the premises after the order
- 6 is made to the same extent as if the order had been directed to that
- 7 person.
- 8 (3) If a controlled activity order binds the occupier of the premises to
- 9 which the order applies, unless the order otherwise provides, the order
- 10 also binds anyone who becomes an occupier of the premises after the
- 11 order is made to the same extent as if the order had been directed to
- 12 that person.

13 **428 Contravention of controlled activity orders**

- 14 (1) A person commits an offence if—
- 15 (a) the territory planning authority makes a controlled activity order
- 16 directed to the person; and
- 17 (b) the order requires the person to do, or not do, something stated
- 18 in the order; and
- 19 (c) the person is given notice of the making of the order (whether
- 20 by being given a copy of the order or otherwise); and
- 21 (d) the person contravenes the order.
- 22 Maximum penalty: the amount stated in schedule 5, column 3 in
- 23 relation to the activity for which the order was made.
- 24 (2) An offence against this section is a strict liability offence.

- 1 **429 Notice of appeal against controlled activity orders**
- 2 (1) This section applies if—
- 3 (a) a person complains about conduct under part 12.2; and
- 4 (b) because of the complaint, or investigations arising from the
- 5 complaint, the territory planning authority makes a controlled
- 6 activity order directed to a person (the *directed person*); and
- 7 (c) the directed person appeals to the ACAT for review of the
- 8 decision to make the order.
- 9 (2) The territory planning authority must tell the complainant in writing
- 10 about the appeal.
- 11 **430 Ending controlled activity orders**
- 12 (1) A controlled activity order operates until it is revoked or ends in
- 13 accordance with the order.
- 14 (2) A person bound by a controlled activity order (other than an ongoing
- 15 controlled activity order) may apply in writing to the territory
- 16 planning authority for the revocation of the order.
- 17 (3) The application must state the grounds on which the revocation of the
- 18 controlled activity order is sought.
- 19 (4) The territory planning authority may revoke the controlled activity
- 20 order if satisfied on reasonable grounds that the order is no longer
- 21 necessary or appropriate.
- 22 **431 Notice ending controlled activity orders**
- 23 (1) If a controlled activity order ends other than by being revoked, the
- 24 territory planning authority must give written notice of the ending of
- 25 the order to the registrar-general.
- 26 (2) If the territory planning authority revokes a controlled activity order,
- 27 the authority must give written notice of the revocation to each person
- 28 given notice of the making of the order under section 426.

Part 12.4 Rectification work

Division 12.4.1 Preliminary

432 Meaning of *rectification work*

In this Act:

rectification work—

(a) means—

(i) work in relation to premises where a controlled activity is being undertaken to ensure compliance with the development approval for the activity; or

(ii) the undertaking of an activity required under a controlled activity order that was not undertaken within the period stated in the order; and

(b) in relation to an authorised person—means the rectification work the authorised person is authorised to undertake.

Division 12.4.2 Directions for rectification work

433 Direction to undertake rectification work

(1) The territory planning authority may direct 1 or more of the following to undertake rectification work in relation to a controlled activity:

(a) the lessee or occupier of premises where the activity was or is being undertaken;

(b) anyone by whom or on whose behalf the activity was or is being undertaken.

(2) The territory planning authority must give notice of the direction to—

(a) the person required to comply with the direction; and

- 1 (b) if different from the person mentioned in paragraph (a)—the
2 lessee or occupier of the premises to which the direction applies.
- 3 (3) The notice must state the following:
- 4 (a) that it is a direction under this Act made by the territory planning
5 authority;
- 6 (b) the name of the person required to comply with the direction;
- 7 (c) the address of the premises in relation to which the direction
8 applies;
- 9 (d) the rectification work required;
- 10 (e) the grounds on which the direction is given;
- 11 (f) that the rectification work must be completed not later than 5
12 working days after the day the notice is given to the person or
13 any longer period stated in the notice.
- 14 (4) The notice must also state that, if the rectification work is not
15 completed by the end of the period required by the notice—
- 16 (a) the territory planning authority may authorise someone else to
17 undertake the work; and
- 18 (b) the reasonable cost of undertaking the work is a debt to the
19 Territory by the person required to comply with the direction.
- 20 (5) The territory planning authority is not required to give notice of its
21 intention to make a direction.
- 22 (6) This section applies whether or not a proceeding for an offence
23 against this chapter has begun or is about to begin.

434 Contravention of direction to undertake rectification work

(1) A person commits an offence if—

- (a) the territory planning authority directs the person to undertake rectification work in relation to a controlled activity; and
- (b) the person is given notice of the direction; and
- (c) the person contravenes the direction.

Maximum penalty: 60 penalty units.

(2) An offence against this section is a strict liability offence.

Division 12.4.3 Authorisations for rectification work

435 Authorisation to undertake rectification work

(1) The territory planning authority may authorise a person (an *authorised person*) to enter the premises to which a direction under section 433 (Direction to undertake rectification work) applies to undertake the rectification work required by the notice under that section if the work is not completed by the end of the period stated in the notice.

(2) However, the territory planning authority must not give the authorisation—

- (a) until the end of the period for making an application to the ACAT for the review of the decision to make the controlled activity order to which the rectification work relates (the *relevant order*); or
- (b) if an application is made to the ACAT for review of the decision to make the relevant order—unless the decision is upheld or the application is withdrawn or dismissed.

(3) The territory planning authority is not required to give notice of its intention to authorise a person under subsection (1).

- 1 **436 Obligation and powers of authorised people**
- 2 (1) An authorised person must undertake rectification work in
- 3 accordance with the directions of an inspector.
- 4 (2) The authorised person may do anything required to undertake 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 car bodies, vegetation, machinery or anything else that
- 11 has to be removed to clean up a leasehold.
- 12 (3) Anything removed from premises to undertake rectification work is
- 13 not required to be returned and may be disposed of.
- 14 **437 Entry to premises by authorised people**
- 15 (1) An authorised person may enter premises to undertake rectification
- 16 work at the premises—
- 17 (a) during business hours with the consent of an occupier; or
- 18 (b) in accordance with a rectification work order.
- 19 *Note* An occupier may consent on being asked for consent by an inspector, or
- 20 after being given an intention to enter notice under s 463.
- 21 (2) An authorised person who enters premises may remain at, and
- 22 re-enter, the premises to undertake the rectification work during
- 23 business hours, or at another time authorised by a rectification work
- 24 order, whether or not the inspector remains at the premises.
- 25 *Note* If entry is made under a rectification work order, see s 441 for re-entry to
- 26 the premises.

1 (3) However—

2 (a) an authorised person must not enter premises for the first time
3 unless accompanied by an inspector; and

4 (b) if the authorised person enters or re-enters the premises with
5 consent under subsection (1) (a), the person must leave the
6 premises if an occupier withdraws consent to the person being
7 on the premises.

8 **Division 12.4.4 Rectification work orders**

9 **438 Application for rectification work order**

10 (1) An inspector may apply to a magistrate for an order authorising entry
11 to premises to undertake rectification work (a *rectification work*
12 *order*) if—

13 (a) the territory planning authority gives a direction for rectification
14 work to be done at the premises; and

15 (b) notice of the direction is given under section 433; and

16 (c) the rectification work is not undertaken in accordance with the
17 notice; and

18 (d) a person is authorised to undertake the rectification work; and

19 (e) 1 or more of the following circumstances apply in relation to the
20 premises:

21 (i) the proposed rectification work cannot reasonably be
22 undertaken, or consent to entry cannot be obtained, during
23 business hours;

24 (ii) an inspector, or an accompanying authorised person, is
25 refused entry in accordance with an intention to enter
26 notice given under section 463;

- 1 (iii) consent to the entry of an inspector or an accompanying
2 authorised person to undertake the rectification work is
3 withdrawn;
- 4 (iv) consent to the entry or re-entry of an authorised person to
5 undertake or complete the rectification work is withdrawn.
- 6 (2) An application for a rectification work order must be sworn and state
7 the following:
- 8 (a) the grounds for making the application;
- 9 (b) why the order is sought;
- 10 (c) if the order sought is for undertaking rectification work at stated
11 times outside business hours—why the work needs to be
12 undertaken at the stated times;
- 13 (d) whether police assistance, or any other assistance, is likely to be
14 needed to execute the order;
- 15 (e) if the application is made remotely under section 442—why the
16 application is being made remotely.

17 **439 Decision on application for rectification work order**

- 18 (1) A magistrate may refuse to consider an application for a rectification
19 work order until the inspector gives the magistrate any additional
20 information the magistrate requires for subsection (2).
- 21 (2) The magistrate must not make the rectification work order unless
22 satisfied that—
- 23 (a) there are grounds for making the application; and
- 24 (b) if the order is for undertaking rectification work at stated times
25 outside business hours—it is reasonably necessary to undertake
26 the work at the stated times; and
- 27 (c) if the application states that assistance is likely to be necessary
28 to execute the order—the assistance mentioned in the
29 application is reasonably necessary to execute the order; and

- 1 (d) if the application is made remotely under section 442—the
2 application has been made in accordance with that section.
- 3 (3) A rectification work order may not be made in relation to an inspector
4 other than the applicant.
- 5 (4) However, a rectification work order may authorise another inspector
6 to accompany the applicant to execute the order.

7 **440 Content of rectification work order**

8 A rectification work order must state the following:

- 9 (a) the address of the premises to which the order relates;
10 (b) the name of the inspector authorised to enter the premises;
11 (c) the name of the authorised person authorised to enter the
12 premises with the inspector;
13 (d) that the inspector and authorised person may use reasonable
14 force to enter the premises;
15 (e) if the order authorises using assistance in executing the order—
16 the assistance that may be used in executing the order;
17 (f) that entry is authorised during business hours or, if authorised
18 outside business hours, at stated times outside business hours;
19 (g) the date, not later than 4 working days after the day the order is
20 made, when the rectification work must begin.

21 **441 Authorisation by rectification work order**

22 A rectification work order authorises the following:

- 23 (a) the undertaking of the rectification work to which the order
24 applies;
25 (b) the stated inspector to enter premises in accordance with the
26 order;

- 1 (c) the stated authorised person to enter premises in accordance
2 with the order if accompanied by the inspector;
- 3 (d) if the order authorises assistance—the inspector and authorised
4 person to enter with assistance in accordance with the order;
- 5 (e) the inspector to remain on the premises, or to re-enter the
6 premises, to give directions to the authorised person;
- 7 (f) the authorised person—
- 8 (i) to remain on the premises to undertake the rectification
9 work, whether or not the inspector remains on the
10 premises; and
- 11 (ii) to re-enter the premises to complete the rectification work.
- 12 *Note* Also, an inspector may require a person's name and address for a believed
13 contravention of this Act (see s 469).

14 **442 Remote application for rectification work order**

- 15 (1) An inspector may apply for a rectification work order in relation to
16 premises by phone, email or other form of communication (a *remote*
17 *application*) if the inspector considers it necessary because consent
18 to the inspector's entry to the premises has been withdrawn while the
19 inspector was on the premises.
- 20 (2) Before applying for the order, the inspector must prepare an
21 application in accordance with section 438 (2).
- 22 (3) However, the inspector may apply for the order before the application
23 is sworn.

24 **443 Documents given after order made on remote application**

- 25 (1) After making a rectification work order on a remote application, the
26 magistrate must immediately give a written copy to the inspector who
27 made the application if it is practicable to do so.

-
- 1 (2) If it is not practicable to provide a written copy of the rectification
2 work order to the inspector—
- 3 (a) the magistrate must tell the inspector—
- 4 (i) the order's terms; and
- 5 (ii) the date and time the order was issued; and
- 6 (b) the inspector must complete a form of order (the ***rectification***
7 ***work order form***) and write on it—
- 8 (i) the magistrate's name; and
- 9 (ii) the date and time the magistrate issued the order; and
- 10 (iii) the order's terms.
- 11 (3) The inspector must, at the first reasonable opportunity, send to the
12 magistrate—
- 13 (a) the sworn application mentioned in section 442 (2); and
- 14 (b) if the inspector completed a rectification work order form—the
15 completed form.
- 16 (4) On receiving the documents mentioned in subsection (3), the
17 magistrate must attach them to the rectification work order.
- 18 (5) A court must find that a power exercised by an inspector was not
19 authorised by a rectification work order made on a remote application
20 if—
- 21 (a) a question arises in a proceeding in the court whether the
22 exercise of power was authorised by a rectification work order;
23 and
- 24 (b) the order is not produced in evidence; and
- 25 (c) it is not proved that the exercise of power was authorised by a
26 rectification work order made on a remote application.

- 1 (6) In this section:
- 2 *remote application*—see section 442 (1).
- 3 **444 Entry under rectification work order—no occupier**
4 **present**
- 5 (1) This section applies if—
- 6 (a) an inspector proposes to enter premises as authorised by a
7 rectification work order; and
- 8 (b) the inspector believes on reasonable grounds that no occupier is
9 present at the premises.
- 10 (2) The inspector, and anyone authorised under the order to provide
11 assistance, may enter the premises using reasonable force in
12 accordance with the order.
- 13 (3) However, only a police officer may use force against a person.
- 14 **445 Entry under rectification work order—occupier present**
- 15 (1) This section applies if—
- 16 (a) an inspector proposes to enter premises as authorised by a
17 rectification work order; and
- 18 (b) an occupier is present at the premises.
- 19 (2) The inspector must—
- 20 (a) produce the inspector’s identity card to the occupier; and
- 21 (b) give the occupier a copy of the rectification work order; and
- 22 (c) tell the occupier that, under the order—
- 23 (i) the authorised person accompanying the inspector is
24 authorised to undertake rectification work under the order;
25 and

- 1 (ii) the inspector may, but need not, remain on the premises to
2 give directions to the authorised person; and
- 3 (d) tell the occupier that—
- 4 (i) hindering the inspector or authorised person may be an
5 offence; and
- 6 (ii) the inspector and anyone authorised under the order to
7 provide assistance may use reasonable force to enter if
8 entry is refused.
- 9 (3) The inspector, and anyone authorised under the order to provide
10 assistance, may enter the premises using reasonable force in
11 accordance with the order.
- 12 (4) However, only a police officer may use force against a person.

13 **Division 12.4.5 Liability for rectification work**

14 **446 Liability for cost of rectification work**

15 A person required to comply with a direction under section 433
16 (Direction to undertake rectification work) must pay to the Territory
17 the reasonable cost of any rectification work undertaken by an
18 authorised person to which the direction related.

19 *Note* An amount owing under a law may be recovered as a debt in a court of
20 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

21 **447 Protection of authorised people from liability**

- 22 (1) An authorised person does not incur civil liability for rectification
23 work undertaken in accordance with the directions of an inspector.
- 24 (2) A civil liability that would, apart from this section, attach to the
25 authorised person attaches instead to the Territory.

Part 12.5 Prohibition notices

448 Giving prohibition notices

- (1) This section applies if the territory planning authority believes on reasonable grounds that the giving of a notice under this section (a *prohibition notice*) is necessary—
- (a) to prevent an entity starting, or continuing, to undertake prohibited development; or
 - (b) to prevent an entity from continuing to undertake development if—
 - (i) the entity has started to undertake the development; and
 - (ii) the development requires development approval; and
 - (iii) there is no development approval for the development; or
 - (c) to prevent an entity from continuing to undertake development other than in accordance with the conditions of a development approval if—
 - (i) the entity has started to undertake a development; and
 - (ii) there is development approval for the development; and
 - (iii) the development undertaken is not in accordance with the conditions of the development approval.
- (2) Also, this section applies to an activity under subsection (1) whether or not—
- (a) a controlled activity order is made, or is proposed to be made, in relation to the activity; or
 - (b) a proceeding for an offence against this chapter in relation to the activity has begun or is about to begin.

- 1 (3) The territory planning authority may give a prohibition notice to
2 either or both of the following:
- 3 (a) the lessee or occupier of premises to which the activity
4 mentioned in subsection (1) relates;
- 5 (b) an entity by which or on behalf of which the activity—
- 6 (i) was, is, or will be, undertaken; or
- 7 (ii) is likely to be undertaken.
- 8 (4) The prohibition notice must state the following:
- 9 (a) that it is a prohibition notice under this Act;
- 10 (b) the name of each entity to which it is directed;
- 11 (c) that the notice takes effect when it is given to an entity to which
12 it is directed;
- 13 (d) the grounds on which the notice is given;
- 14 (e) the activity, and the address of the premises, in relation to which
15 the notice applies;
- 16 (f) that the activity—
- 17 (i) must not be carried on by the entity; or
- 18 (ii) must not be carried on by the entity except in accordance
19 with the notice;
- 20 (g) when the notice ends.
- 21 **Example—par (g)**
22 on the happening of an event stated in the notice
- 23 (5) A prohibition notice takes effect when it is given to an entity to which
24 it is directed.
- 25 (6) The territory planning authority is not required to give notice of its
26 intention to give a prohibition notice.

- 1 **449 Contravention of prohibition notices**
- 2 (1) A person commits an offence if—
- 3 (a) the territory planning authority gives a prohibition notice to the
- 4 person; and
- 5 (b) the notice is directed to the person; and
- 6 (c) the notice states that an activity must not be carried on by the
- 7 person in relation to premises; and
- 8 (d) the person carries on the activity in relation to the premises.
- 9 Maximum penalty: 60 penalty units.
- 10 (2) A person commits an offence if—
- 11 (a) the territory planning authority gives a prohibition notice to the
- 12 person; and
- 13 (b) the notice is directed to the person; and
- 14 (c) the notice states that an activity must not be carried on by the
- 15 person in relation to premises except in accordance with the
- 16 notice; and
- 17 (d) the person carries on the activity in relation to the premises
- 18 otherwise than in accordance with the notice.
- 19 Maximum penalty: 60 penalty units.
- 20 (3) An offence against this section is a strict liability offence.
- 21 **450 Ending prohibition notices**
- 22 A prohibition notice remains in force until the earliest of the
- 23 following:
- 24 (a) the date the notice ends in accordance with the notice;
- 25 (b) the date the notice is revoked.

1 **451 Application for revocation of prohibition notices**

- 2 (1) A person to whom a prohibition notice is directed may, in writing,
3 apply to the territory planning authority for the revocation of the
4 notice.
- 5 (2) The application must state the grounds on which the revocation is
6 sought.
- 7 (3) The territory planning authority may revoke the prohibition notice if
8 satisfied on reasonable grounds that the notice is no longer necessary
9 or appropriate.

**Part 12.6 Injunctions and termination of
leases and licences**

**452 Injunctions to restrain contravention of controlled activity
orders and prohibition notices**

- (1) This section applies if a person (the *relevant person*) has engaged, is engaging, or proposes to engage, in conduct contravening a controlled activity order or prohibition notice.
- (2) The territory planning authority or anyone else may apply to the Supreme Court for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction—
- (a) restraining the relevant person from engaging in the conduct; and
 - (b) if satisfied that it is desirable to do so—requiring the relevant person to do anything.
- (4) The Supreme Court may grant an injunction restraining a relevant person from engaging in conduct of a particular kind—
- (a) if satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.
- (5) This section applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

453 Termination of leases

(1) This section applies if—

(a) a lessee—

(i) contravenes this chapter or the lease; or

(ii) fails to pay a noncompliance fee or complete works within a new compliance time ; or

(iii) receives a compliance reminder notice and fails to comply with the notice; and

(b) the territory planning authority has complied with section 455 (Notice of termination) in relation to the lessee.

(2) The territory planning authority may, by written notice (a **termination notice**) given to the lessee, terminate the lease.

(3) A termination notice takes effect 10 working days after the day the notice is given.

(4) At the same time as, or as soon as practicable after, the termination notice is given to the lessee, the territory planning authority must give a copy of the termination notice to—

(a) the registrar-general; and

(b) any person having an interest in the land described in the lease that is registered under the [Land Titles Act 1925](#).

(5) The validity of the termination of a lease is not affected by a failure to comply with subsection (4).

(6) In this section:

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

- 1 (a) the lessee must, within 15 days after the day the lessee receives
2 the notice—
- 3 (i) if the lessee has failed to give the authority a community
4 use report for a financial year—give the authority the
5 community use report; or
- 6 (ii) if the lessee has failed to give the authority additional
7 information requested under section 292 (4) in relation to
8 a community use report—give the authority the additional
9 information; or
- 10 (iii) if the lessee has failed to commission an audit as required
11 by the authority under section 293 (1)—commission the
12 audit; and
- 13 (b) if the lessee fails to comply with the notice within the stated
14 time, the lessee's lease may be terminated.

15 **454 Termination of licences**

- 16 (1) This section applies if—
- 17 (a) a person who occupies land under a licence from the
18 Commonwealth or the Territory contravenes this chapter or the
19 licence; and
- 20 (b) the territory planning authority has complied with section 455
21 (Notice of termination) in relation to the licensee.
- 22 (2) The territory planning authority may terminate the licence by written
23 notice given to the licensee.
- 24 (3) A notice under subsection (2) takes effect 5 working days after the
25 day the notice is given to the licensee.

- 1 **455 Notice of termination**
- 2 (1) The territory planning authority must not terminate a lease or a
- 3 licence under this part unless it has—
- 4 (a) by written notice given to the lessee or licensee—
- 5 (i) told the lessee or licensee that it is considering terminating
- 6 the lease or licence; and
- 7 (ii) stated the grounds on which it is considering taking that
- 8 action; and
- 9 (iii) invited the lessee or licensee to tell the authority in writing,
- 10 not later than 15 working days after the day the lessee or
- 11 licensee receives the notice, why the lessee or licensee
- 12 considers that the lease or licence should not be terminated;
- 13 and
- 14 (b) for the termination of a lease—given a copy of the notice under
- 15 paragraph (a) to each person with a registered interest in the
- 16 lease; and
- 17 (c) taken into account any reasons for not terminating the lease or
- 18 licence given to the authority by the lessee or licensee in
- 19 accordance with the notice served on the lessee or licensee under
- 20 paragraph (a).
- 21 (2) The territory planning authority may extend the time for responding
- 22 to the notice under subsection (1) (a) (iii).

Chapter 13 Enforcement

Part 13.1 Preliminary

456 Definitions—ch 13

In this chapter:

connected—a thing is ***connected*** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence for which there are reasonable grounds for believing it has been, is being, or will be, committed.

Part 13.2 Inspectors

457 Appointment of inspectors

The territory planning authority may appoint a public servant as an inspector for this Act.

Note For laws about appointments, see the [Legislation Act](#), pt 19.3.

458 Identity cards

(1) The territory planning authority must give a person appointed as an inspector an identity card stating the person's name and that the person is an inspector.

(2) The identity card must show—

- (a) a recent photograph of the person; and
- (b) the card's date of issue and expiry; and
- (c) anything else prescribed by regulation.

(3) A person commits an offence if—

- (a) the person stops being an inspector; and
- (b) the person does not return the person's identity card to the territory planning authority as soon as practicable, but not later than 5 working days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

(4) An offence against this section is a strict liability offence.

Part 13.3 Powers of inspectors

459 Entry to premises

(1) For this Act, an inspector may—

(a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or

(b) if entering without an authorised person—at any time, enter premises with the occupier’s consent; or

(c) if entering with an authorised person—during business hours, enter the premises with the occupier’s consent; or

Note An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 463.

(d) enter premises with an authorised person in accordance with a rectification work order; or

(e) enter premises in accordance with a search warrant or monitoring warrant.

(2) However, subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes.

(3) If an inspector wants to ask for consent to enter a building or other structure on premises, the inspector may, without the occupier’s consent, enter any land that forms part of the premises to—

(a) ask for the consent; or

(b) give an intention to enter notice under section 463.

(4) To remove any doubt—

(a) an inspector may enter premises under subsection (1) without payment of an entry fee or other charge; and

- 1 (b) for subsection (3), it does not matter whether someone is on the
2 premises or not when the inspector enters.

3 **460 Remaining at premises**

4 An inspector must not remain at premises entered under this part if
5 the inspector does not show their identity card when asked by the
6 occupier.

7 **461 Consent to entry without authorised person**

- 8 (1) This section applies if an inspector intends to ask the occupier of the
9 premises to consent to the inspector entering the premises under
10 section 459 (1) (b).
- 11 (2) Before asking for consent, the inspector must—
- 12 (a) show their identity card; and
- 13 (b) tell the occupier—
- 14 (i) the purpose of the entry; and
- 15 (ii) that the occupier may refuse consent to enter the premises;
16 and
- 17 (iii) that the inspector may exercise certain powers under
18 section 464 (General powers on entry to premises); and
- 19 (iv) that the occupier may withdraw consent to remain at the
20 premises.
- 21 (3) If the occupier consents, the inspector must ask the occupier to sign a
22 written acknowledgment (an *acknowledgment of consent*) stating the
23 following:
- 24 (a) the matters mentioned in subsection (2) (b);
- 25 (b) that the occupier was told of those matters;
- 26 (c) that the occupier consented to the entry;
- 27 (d) the date and time that consent was given.

- 1 (4) If the occupier signs an acknowledgment of consent, the inspector
2 must immediately give a copy to the occupier.
- 3 (5) A court must find that the occupier did not consent to the inspector
4 entering or remaining at the premises under this part if—
- 5 (a) a question arises in a proceeding in the court whether the
6 occupier consented; and
- 7 (b) an acknowledgment of consent is not produced in evidence; and
- 8 (c) it is not proved that the occupier consented.
- 9 **462 Consent to entry with authorised person**
- 10 (1) This section applies if an inspector intends to ask the occupier of the
11 premises to consent to the inspector and an authorised person entering
12 the premises under section 459 (1) (c).
- 13 (2) The inspector must, during business hours—
- 14 (a) show their identity card; and
- 15 (b) tell the occupier that—
- 16 (i) the territory planning authority gave a direction for
17 rectification work to be done at the premises; and
- 18 (ii) notice of the direction was given under section 433; and
- 19 (iii) the rectification work was not undertaken in accordance
20 with the notice; and
- 21 (iv) a person has been authorised to undertake the rectification
22 work; and
- 23 (v) entry is sought to allow the authorised person to undertake
24 the rectification work; and
- 25 (vi) the authorised person is accompanying the inspector; and
- 26 (vii) the inspector may, but need not, remain at the premises to
27 give directions to the authorised person; and

- 1 (viii) the authorised person may return during business hours as
2 required to complete the work; and
- 3 (ix) the occupier may refuse consent to enter the premises; and
- 4 (x) the occupier may withdraw consent to remain at the
5 premises.
- 6 (3) If the occupier consents, the inspector must ask the occupier to sign a
7 written acknowledgment (an *acknowledgment of consent*) stating the
8 following:
- 9 (a) the matters mentioned in subsection (2) (b);
- 10 (b) that the occupier was told of those matters;
- 11 (c) that the occupier consented to the entry;
- 12 (d) the date and time that consent was given.
- 13 (4) If the occupier signs an acknowledgment of consent, the inspector
14 must immediately give a copy to the occupier.
- 15 (5) A court must find that the occupier did not consent to the inspector
16 entering or remaining at the premises under this part if—
- 17 (a) a question arises in a proceeding in the court whether the
18 occupier consented; and
- 19 (b) an acknowledgment of consent is not produced in evidence; and
- 20 (c) it is not proved that the occupier consented.

21 **463 Entry on notice for rectification work and monitoring**

- 22 (1) This section applies to an inspector proposing to enter premises—
- 23 (a) under section 459 (1) (b) to check whether a controlled activity
24 has happened, or is happening, in relation to the premises; or
- 25 (b) under section 459 (1) (b) to check whether 1 or more of the
26 following in relation to the premises is being complied with:
- 27 (i) a controlled activity order;

- 1 (ii) a direction under section 433 to undertake rectification
2 work;
- 3 (iii) a prohibition notice;
- 4 (iv) an injunction under section 452; or
- 5 (c) with an authorised person under section 459 (1) (c).
- 6 (2) The territory planning authority may give an occupier of the premises
7 written notice of the inspector's intention to enter the premises
8 (an *intention to enter notice*).
- 9 (3) An intention to enter notice—
- 10 (a) must be given to the occupier at least 2 working days before the
11 proposed entry; and
- 12 (b) may be given to the occupier without first asking for the
13 occupier's consent to enter the premises.
- 14 (4) For a proposed entry mentioned in subsection (1) (a) or (b), an
15 intention to enter notice must state—
- 16 (a) the reason for the proposed entry; and
- 17 (b) when the inspector proposes to enter the premises; and
- 18 (c) that the occupier may refuse consent for the inspector or
19 authorised person to enter the premises; and
- 20 (d) that the occupier may withdraw consent for the inspector or
21 authorised person to remain at the premises.
- 22 (5) For a proposed entry mentioned in subsection (1) (c), an intention to
23 enter notice must state—
- 24 (a) that—
- 25 (i) the territory planning authority gave a direction for
26 rectification work to be done at the premises; and
- 27 (ii) notice of the direction was given under section 433; and

- 1 (iii) the rectification work was not undertaken in accordance
2 with the notice; and
- 3 (iv) a person has been authorised to undertake the rectification
4 work; and
- 5 (v) the inspector proposes to enter the premises with an
6 authorised person to allow the authorised person to
7 undertake the rectification work; and
- 8 (vi) the inspector may, but need not, remain at the premises to
9 give directions to the authorised person; and
- 10 (vii) the occupier may refuse consent for the inspector or
11 authorised person to enter the premises; and
- 12 (viii) the occupier may withdraw consent for the inspector or
13 authorised person to remain at the premises; and
- 14 (b) when, during business hours, the work is proposed to be
15 undertaken.
- 16 (6) Before an inspector enters the premises in accordance with the
17 intention to enter notice, the inspector must—
- 18 (a) tell the occupier that—
- 19 (i) the inspector proposes to enter the premises with an
20 authorised person to allow the authorised person to
21 undertake the rectification work to which the notice relates;
22 or
- 23 (ii) the inspector proposes to enter the premises to check
24 whether a controlled activity has happened, or is
25 happening; or
- 26 (iii) the inspector intends to enter the premises to check
27 compliance in accordance with the notice; and

- 1 (b) tell the occupier that, if the occupier does not consent to the
2 inspector or authorised person entering, or remaining at, the
3 premises, an application may be made to a court for a
4 rectification work order or a monitoring warrant; and
- 5 (c) give the occupier a copy of the notice.
- 6 (7) If an inspector gives the occupier an intention to enter notice, the
7 inspector must ask the occupier to sign a written acknowledgment
8 that the occupier was told that—
- 9 (a) the inspector—
- 10 (i) proposes to enter the premises with an authorised person to
11 allow the authorised person to undertake the rectification
12 work to which the notice relates; or
- 13 (ii) proposes to enter the premises to check whether a
14 controlled activity has happened, or is happening; or
- 15 (iii) intends to enter the premises to check compliance in
16 accordance with the notice; and
- 17 (b) if the occupier does not consent to the inspector or authorised
18 person entering or remaining at the premises—an application
19 may be made to a court for a rectification work order or a
20 monitoring warrant.
- 21 (8) If the occupier signs an acknowledgment under subsection (7), the
22 inspector must immediately give a copy to the occupier.

23 **464 General powers on entry to premises**

- 24 (1) For this Act, an inspector who enters premises under this chapter may
25 do 1 or more of the following in relation to the premises or anything
26 at the premises:
- 27 (a) inspect or examine anything;
- 28 (b) take measurements or conduct tests;

- 1 (c) take photographs or audio, video or other recordings, or make
2 sketches;
- 3 (d) ask the occupier, or anyone else at the premises—
- 4 (i) to give information to the inspector; or
- 5 (ii) to produce documents to the inspector.
- 6 *Note* An inspector who enters premises under a search warrant may also
7 exercise power under s 466, s 467 and s 468. An inspector who enters
8 premises under a monitoring warrant may also exercise powers under
9 s 466 and s 468. See also s (3) in relation to the exercise of power under
10 warrants.
- 11 (2) An inspector must not exercise a power under subsection (1) unless
12 the inspector believes on reasonable grounds that the exercise relates
13 to 1 or more of the following:
- 14 (a) a controlled activity or possible controlled activity;
- 15 (b) a prohibition notice;
- 16 (c) a direction under section 433 to undertake rectification work;
- 17 (d) an injunction under section 452;
- 18 (e) an offence or possible offence, or a thing or activity connected
19 with an offence or possible offence, against this Act.
- 20 (3) If the inspector enters the premises under a search warrant or
21 monitoring warrant, the inspector may only exercise a power under
22 subsection (1) in relation to a matter mentioned in subsection (2) if
23 the warrant relates to the matter.
- 24 (4) This section does not apply to an inspector who enters premises under
25 section 459 (1) (c) or (d).

- 1 **465 Power on entry for rectification work**
- 2 For this Act, an inspector who enters premises under
- 3 section 459 (1) (c) or (d) may give directions to the authorised person
- 4 undertaking rectification work about how the work is to be
- 5 undertaken.
- 6 **466 Power to require help on entry under warrant**
- 7 (1) An inspector who enters premises under a search warrant or
- 8 monitoring warrant may require the occupier, or anyone at the
- 9 premises, to give the inspector reasonable help to exercise a power
- 10 under this chapter.
- 11 (2) A person commits an offence if the person fails to take all reasonable
- 12 steps to comply with a requirement made of the person under
- 13 subsection (1).
- 14 Maximum penalty: 50 penalty units.
- 15 **467 Power to take samples on entry under warrant**
- 16 (1) An inspector who enters premises under a search warrant or
- 17 monitoring warrant may take samples of anything the inspector
- 18 believes on reasonable grounds is connected with the matter to which
- 19 the warrant relates.
- 20 (2) The inspector must—
- 21 (a) give a receipt for the sample to the occupier of the place from
- 22 where the sample was taken; and
- 23 (b) divide the sample into 2 parts as nearly as practicable identical
- 24 in size and composition to each other; and
- 25 (c) ensure that each part is suitable for the purpose of analysis; and
- 26 (d) place each part in a separate container and seal the containers;
- 27 and

1 (e) attach to each container a label that is signed by the inspector
2 and states the date and time when, and the place where, the
3 sample was taken; and

4 (f) give 1 of the containers to the occupier.

5 **468 Power to seize things on entry under search warrant**

6 An inspector who enters premises under a search warrant may seize
7 anything at the premises that the inspector is authorised to seize under
8 the warrant.

9 **469 Power to require name and address**

10 (1) An inspector may require a person to state the person's name and
11 home address if the inspector believes on reasonable grounds that the
12 person is committing or has just committed an offence against this
13 Act.

14 (2) The inspector must tell the person the reason for the requirement and,
15 as soon as practicable, record the reason.

16 (3) The person may ask the inspector to show their identity card for
17 inspection by the person.

18 (4) A person must comply with a requirement made of the person under
19 subsection (1) if the inspector—

20 (a) tells the person the reason for the requirement; and

21 (b) complies with any request made by the person under
22 subsection (3).

23 Maximum penalty: 10 penalty units.

24 (5) An offence against this section is a strict liability offence.

Part 13.4 Information requirements

470 Information requirements

(1) This section applies if the territory planning authority suspects on reasonable grounds that a person—

(a) has information reasonably required by the authority for the administration or enforcement of this Act; or

(b) has possession or control of a document containing that information.

(2) The territory planning authority may give the person a written notice requiring the person to give the information or produce the document to the authority (an *information requirement notice*).

(3) The notice must include details of the following:

(a) the identity of the person to whom it is given;

(b) why the information is required;

(c) the time by which the notice must be complied with;

(d) the operation of subsection (4).

(4) A person commits an offence if the person intentionally contravenes an information requirement notice.

Maximum penalty: 100 penalty units.

(5) A person does not incur any civil or criminal liability only because the person gives information or a document to the territory planning authority in accordance with an information requirement notice.

471 Treatment of documents provided under information requirement

(1) The territory planning authority must return a document produced in accordance with an information requirement notice to the person who produced the document as soon as practicable.

- 1 (2) The territory planning authority may make copies of, or take extracts
2 from, the document.

3 **472 When authority may ask for information from**
4 **commissioner for revenue**

- 5 (1) This section applies if the territory planning authority may or must
6 notify, or intends to take action under this Act in relation to, an
7 uncontactable person or a person the authority reasonably believes is
8 an uncontactable person.

9 **Examples**

- 10 1 giving a person notice of the making of a development application under
11 div 7.5.4 (Public notification of development applications)
12 2 giving a person who made a representation about a development application
13 notice of the approval of the application
14 3 action under s 378 (How land may be recovered if former lessee or licensee in
15 possession) or this chapter.

- 16 (2) The territory planning authority may, in writing, ask the
17 commissioner for revenue to provide the person's name or the
18 person's home address or other contact address.

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

21 *Note* See also the [Taxation Administration Act 1999](#), s 97 (1) (d) for power to
22 disclose the information.

- 23 (4) In this section:

24 ***uncontactable person***—a person is an ***uncontactable person*** if the
25 territory planning authority does not have complete or up-to-date
26 information about the person's name or the person's contact address.

- 1 **473 When authority may ask for information about leases**
2 **from commissioner for revenue**
- 3 (1) The territory planning authority may, in writing, ask the
4 commissioner for revenue for the following information in relation to
5 a lease:
- 6 (a) the lessee's name;
7 (b) the lessee's home address or other contact address.
- 8 (2) The commissioner for revenue must disclose the information required
9 in a request made in accordance with subsection (1).
- 10 *Note* See also the [Taxation Administration Act 1999](#), s 97 (1) (d) for power to
11 disclose the information.
- 12 (3) The territory planning authority must not make a request under
13 subsection (1) in relation to a lease more often than—
- 14 (a) once every month; or
15 (b) if a regulation prescribes a longer period—once each period.
- 16 (4) Nothing in this section prevents the territory planning authority from
17 asking for information under section 472.

Part 13.5 Search warrants

474 Application for search warrant

- (1) An inspector may apply to a magistrate for a warrant to enter premises (a *search warrant*).
- (2) The application must be sworn and state the grounds on which the search warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a search warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The search warrant must state the following:
 - (a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this chapter;
 - (b) the offence for which the warrant is issued;
 - (c) the things that may be seized under the warrant;
 - (d) the hours when the premises may be entered;
 - (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

475 Remote application for search warrant

- (1) An inspector may apply for a search warrant by phone, email or other form of communication (a *remote application*) if the inspector considers it necessary because of urgent or other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) However, the inspector may apply for the warrant before the application is sworn.

476 Documents given after warrant issued on remote application

- (1) After issuing a search warrant on a remote application, the magistrate must immediately give a written copy to the inspector who made the application if it is practicable to do so.
- (2) If it is not practicable to give a written copy to the inspector—
 - (a) the magistrate must tell the inspector—
 - (i) the warrant's terms; and
 - (ii) the date and time the warrant was issued; and
 - (b) the inspector must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (3) The written copy of the search warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this chapter.

- 1 (4) The inspector must, at the first reasonable opportunity, send to the
2 magistrate—
3 (a) the sworn application mentioned in section 475 (2); and
4 (b) if the inspector completed a warrant form—the completed
5 warrant form.
- 6 (5) On receiving the documents mentioned in subsection (4), the
7 magistrate must attach them to the search warrant.
- 8 (6) A court must find that a power exercised by an inspector was not
9 authorised by a search warrant issued on a remote application if—
10 (a) a question arises in a proceeding in the court whether the
11 exercise of power was authorised by a search warrant; and
12 (b) the warrant is not produced in evidence; and
13 (c) it is not proved that the exercise of power was authorised by a
14 search warrant issued on a remote application.
- 15 (7) In this section:
16 *remote application*—see section 475 (1).

17 **477 Search warrants—announcement before entry**

- 18 (1) Before anyone enters premises under a search warrant, an inspector
19 must—
20 (a) announce that the inspector is authorised to enter the premises;
21 and
22 (b) give anyone at the premises an opportunity to allow entry to the
23 premises; and
24 (c) if the occupier of the premises, or someone else who apparently
25 represents the occupier, is present at the premises—identify
26 themselves 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 the
3 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 **478 Details of search warrant must be given to occupier**

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 **479 Occupier may be present during search**

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 search
18 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.

Part 13.6 Monitoring warrants

480 Application for monitoring warrant

(1) An inspector may apply for a warrant in relation to premises (a *monitoring warrant*) if—

(a) any of the following apply:

(i) the inspector believes on reasonable grounds that a controlled activity has happened, or is happening, at the premises;

(ii) there is a controlled activity order in relation to a controlled activity at the premises;

(iii) there is a prohibition notice in relation to the premises;

(iv) a direction was given under section 433 to undertake rectification work at the premises;

(v) an injunction under section 452 is in force in relation to the premises; and

(b) any of the following apply:

(i) an inspector has been refused entry in accordance with an intention to enter notice given under section 463;

(ii) the occupier—

(A) is given an intention to enter notice under section 463; and

(B) consents to the entry of an inspector in accordance with the notice; and

(C) withdraws the consent.

(2) An application for a monitoring warrant must be sworn and state—

(a) the grounds on which the applicant relies to make the application; and

- 1 (b) why the warrant is sought; and
- 2 (c) whether police assistance, or any other assistance, is likely to be
- 3 needed to execute the warrant; and
- 4 (d) if the application is made remotely under section 484—why the
- 5 application is being made remotely.

6 **481 Decision on application for monitoring warrant**

- 7 (1) A magistrate may refuse to consider an application for a monitoring
- 8 warrant until the inspector gives the magistrate any additional
- 9 information the magistrate requires for subsection (2).
- 10 (2) The magistrate must not issue the monitoring warrant unless satisfied
- 11 that—
- 12 (a) there are grounds for making the application; and
- 13 (b) if the application states that assistance is likely to be necessary
- 14 to execute the warrant—that the assistance mentioned in the
- 15 application is reasonably necessary to execute the warrant; and
- 16 (c) if the application is made remotely under section 484—the
- 17 application has been made in accordance with that section.
- 18 (3) A monitoring warrant may not be issued in relation to an inspector
- 19 other than the applicant.
- 20 (4) However, a monitoring warrant may authorise another inspector to
- 21 accompany the applicant to execute the warrant.

22 **482 Content of monitoring warrant**

23 A monitoring warrant must state the following:

- 24 (a) the address of the premises to which the warrant relates;
- 25 (b) the name of the inspector authorised to enter the premises;
- 26 (c) that the inspector may use reasonable force to enter the
- 27 premises;

- 1 (d) if the warrant authorises using assistance in executing the
2 warrant—the assistance that may be used in executing the
3 warrant;
4 (e) that the warrant ends—
5 (i) if the ground for applying for the warrant is a circumstance
6 mentioned in section 480 (1) (a) (i)—5 working days after
7 the day the warrant is issued; or
8 (ii) if the ground for applying for the warrant is a circumstance
9 mentioned in section 480 (1) (a) (ii) to (v)—on the earliest
10 of the following:
11 (A) when the circumstance no longer applies;
12 (B) 3 months after the day the warrant is issued.

13 **483 Authorisation by monitoring warrant**

14 The monitoring warrant authorises the stated inspector, and anyone
15 authorised by the warrant to provide assistance, to enter premises in
16 accordance with the warrant.

17 *Note 1* While on the premises, the inspector may exercise power under s 464.

18 *Note 2* For when an inspector may require a person to state the person's name
19 and address, see s 469.

20 **484 Remote application for monitoring warrant**

- 21 (1) An inspector may apply for a monitoring warrant in relation to
22 premises by phone, email or other form of communication (a ***remote***
23 ***application***) if the inspector considers it necessary because consent
24 to the inspector's entry to the premises has been withdrawn while the
25 inspector was on the premises.
26 (2) Before applying for the warrant, the inspector must prepare an
27 application in accordance with section 480 (2).
28 (3) However, the inspector may apply for the warrant before the
29 application is sworn.

485 Documents given after warrant issued on remote application

- (1) After issuing a monitoring warrant on a remote application, the magistrate must immediately give a written copy to the inspector who made the application if it is practicable to do so.
- (2) If it is not practicable to provide a written copy of the monitoring warrant to the inspector—
 - (a) the magistrate must tell the inspector—
 - (i) the warrant's terms; and
 - (ii) the date and time the warrant was issued; and
 - (b) the inspector must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (3) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application mentioned in section 484 (2); and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (4) On receiving the documents mentioned in subsection (3), the magistrate must attach them to the monitoring warrant.
- (5) A court must find that a power exercised by an inspector was not authorised by a monitoring warrant issued on a remote application if—
 - (a) a question arises in a proceeding in the court whether the exercise of power was authorised by a monitoring warrant; and

- 1 (b) the warrant is not produced in evidence; and
2 (c) it is not proved that the exercise of power was authorised by a
3 monitoring warrant issued on a remote application.

- 4 (6) In this section:
5 *remote application*—see section 484 (1).

6 **486 Entry under monitoring warrant—no occupier present**

- 7 (1) This section applies if—
8 (a) an inspector proposes to enter premises as authorised by a
9 monitoring warrant; and
10 (b) the inspector believes on reasonable grounds that no occupier is
11 present at the premises.
12 (2) The inspector, and anyone authorised by the warrant to provide
13 assistance, may enter the premises using reasonable force in
14 accordance with the warrant.
15 (3) However, only a police officer may use force against a person.

16 **487 Entry under monitoring warrant—occupier present**

- 17 (1) This section applies if—
18 (a) an inspector proposes to enter premises as authorised by a
19 monitoring warrant; and
20 (b) an occupier is present at the premises.
21 (2) The inspector must—
22 (a) show the inspector's identity card to the occupier; and
23 (b) give the occupier a copy of the monitoring warrant; and
24 (c) tell the occupier that—
25 (i) hindering the inspector may be an offence; and

- 1 (ii) the inspector may use reasonable force to enter if entry is
2 refused.
- 3 (3) The inspector, and anyone authorised by the warrant to provide
4 assistance, may enter the premises using reasonable force in
5 accordance with the warrant.
- 6 (4) However, only a police officer may use force against a person.

Part 13.7 Return and forfeiture of things seized

488 Receipt for thing seized

- (1) As soon as practicable after an inspector seizes a thing under this chapter, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously, at the place of seizure under section 468 (Power to seize things on entry under search warrant).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the inspector's name, and how to contact the inspector;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

489 Moving thing to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is, or contains, something to which the warrant relates;
 - (ii) it is significantly more practicable to move the thing taking into account the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

- 1 (b) the occupier of the premises agrees in writing.
- 2 (2) The thing may be moved to another place for examination or
3 processing for not longer than 72 hours.
- 4 (3) An inspector may apply to a magistrate for an extension of time if the
5 inspector believes on reasonable grounds that the thing cannot be
6 examined or processed within 72 hours.
- 7 (4) The inspector must give notice of the application to the occupier of
8 the premises, and the occupier is entitled to be heard on the
9 application.
- 10 (5) If a thing is moved to another place under this section, the inspector
11 must, if practicable—
- 12 (a) tell the occupier of the premises the address of the place where,
13 and time when, the examination or processing will be
14 undertaken; and
- 15 (b) allow the occupier or the occupier's representative to be present
16 during the examination or processing.
- 17 (6) The provisions of this chapter relating to the issue of search warrants
18 apply, with any necessary changes, to the giving of an extension
19 under this section.
- 20 **490 Action in relation to seized thing**
- 21 (1) An inspector who seizes a thing under section 468 (Power to seize
22 things on entry under search warrant) may—
- 23 (a) remove the thing from the premises where it was seized to
24 another place; or
- 25 (b) leave the thing at the premises but restrict access to it.
- 26 (2) A person commits an offence if—
- 27 (a) the person interferes with a seized thing, or anything containing
28 a seized thing, to which access has been restricted under
29 subsection (1) (b); and

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

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

5 **491 Access to thing seized**

6 A person who would, apart from the seizure, be entitled to inspect a
7 thing seized under this chapter may—

- 8 (a) inspect it; and
9 (b) if it is a document—take extracts from it or make copies of it.

10 **492 Return of thing seized**

11 (1) A thing seized under this chapter must be returned to its owner, or
12 reasonable compensation must be paid by the Territory to the owner
13 for the loss of the thing, if—

14 (a) an infringement notice for an offence relating to the thing is not
15 served on the owner within 1 year after the day of the seizure
16 and—

17 (i) a prosecution for an offence relating to the thing is not
18 begun within the 1-year period; or

19 (ii) a prosecution for an offence relating to the thing is begun
20 within the 1-year period but the court does not find the
21 offence proved; or

22 (b) an infringement notice for an offence relating to the thing is
23 served on the owner within 1 year after the day of the seizure,
24 the infringement notice is withdrawn and—

25 (i) a prosecution for an offence relating to the thing is not
26 begun within the 1-year period; or

27 (ii) a prosecution for an offence relating to the thing is so
28 begun but the court does not find the offence proved; or

- 1 (c) an infringement notice for an offence relating to the thing is
2 served on the owner and not withdrawn within 1 year after the
3 day of the seizure, liability for the offence is disputed in
4 accordance with the *Magistrates Court Act 1930*, section 132
5 and—
- 6 (i) an information is not laid in the Magistrates Court against
7 the person for the offence within 60 days after the day
8 notice is given under that section that liability is disputed;
9 or
- 10 (ii) an information is laid in the Magistrates Court against the
11 person for the offence within the 60-day period, but the
12 Magistrates Court does not find the offence proved.
- 13 (2) If anything seized under this chapter is not required to be returned or
14 reasonable compensation is not required to be paid under
15 subsection (1), the thing—
- 16 (a) is forfeited to the Territory; and
- 17 (b) may be sold, destroyed or otherwise disposed of as the chief
18 planner directs.

Chapter 14 Access to information

Part 14.1 Public register

493 Authority to keep public register

- (1) The territory planning authority must keep a register (the *public register*).
- (2) The territory planning authority may keep the public register in any form the authority considers appropriate.

494 Contents of public register

- (1) The public register must contain the following:
 - (a) if a person applies for a declaration under section 156 (Declaration for development encroaching on adjoining land if development prohibited)—the decision on the declaration;
 - (b) for each development application (unless withdrawn)—
 - (i) the date the application was submitted; and
 - (ii) the lessee's name and, if a person is authorised to act on their behalf, that person's name; and
 - (iii) the location of the proposed development; and
 - (iv) a summary by the territory planning authority of the proposed development; and
 - (v) if the application was, or is being, publicly notified under division 7.5.4; and
 - (vi) whether the application was amended under section 166; and

- 1 (vii) if representations under section 177 (other than
2 representations that are withdrawn) have been made on the
3 application; and
- 4 *Note* A person who makes a representation may apply to have the
5 representation excluded from the public register (see s 498).
- 6 (viii) whether the Minister has decided to establish an inquiry
7 panel to inquire about an EIS for the development proposal
8 to which the application relates;
- 9 (c) if a development application is decided under section 182—
- 10 (i) the date the application was decided; and
- 11 (ii) whether the application was approved, approved subject to
12 a condition or refused; and
- 13 (iii) whether the decision on the application was reconsidered
14 under section 196; and
- 15 (iv) for an approved application—whether the approval was
16 corrected under section 200 or amended under section 203;
17 and
- 18 (v) for a decision reviewed by the ACAT—whether the ACAT
19 confirmed or varied the decision;
- 20 (d) the offsets register;
- 21 (e) for each lease variation charge for a non-standard chargeable
22 variation—the amounts represented by V_1 and V_2 in section 328
23 for the charge;
- 24 (f) for each reduction of an amount of a lease variation charge for a
25 chargeable variation of a nominal rent lease under
26 section 334 (Reduction of lease variation charges)—
- 27 (i) a description of the chargeable variation; and
- 28 (ii) the lease variation charge; and
- 29 (iii) the amount of the lease variation charge reduced;

- 1 (g) for each deferral arrangement under section 339 (Approval to
2 defer payment of lease variation charges)—
- 3 (i) the date the arrangement was entered into; and
- 4 (ii) the amount of the lease variation charge deferred under the
5 arrangement at the date the arrangement was entered into;
- 6 (h) for each controlled activity order while the order is in force—
- 7 (i) the premises to which the order relates; and
- 8 (ii) the directions in the order (see section 425 (3)); and
- 9 (iii) the person to whom the order is directed;
- 10 (i) for each direction under section 433 to undertake rectification
11 work while the direction is in force—
- 12 (i) the premises where the work is to be undertaken; and
- 13 (ii) the person directed to undertake the work;
- 14 (j) for each prohibition notice given under section 448 while the
15 notice is in force—
- 16 (i) the premises to which the notice relates; and
- 17 (ii) the person to whom the notice is given.
- 18 (2) The public register may contain any other information that the
19 territory planning authority considers appropriate.
- 20 (3) However, the public register must not contain—
- 21 (a) associated documents for development applications,
22 development approvals or leases; or
- 23 (b) the name of a complainant under section 410.

24 *Note* Part of a document otherwise required to be included in the register may
25 be excluded under pt 14.2 (Restrictions on availability of information).
26 A note about the exclusion is included in the register (see s 498 (6) or
27 s 499 (3)).

- 1 **495 Inspection of public register and associated documents**
- 2 (1) The territory planning authority must ensure that the public register
- 3 and associated documents are available for public inspection during
- 4 business hours.
- 5 (2) The territory planning authority must allow people inspecting the
- 6 public register and associated documents to make copies of, or take
- 7 extracts from, the register and associated documents.
- 8 **496 Contents of public register on authority website**
- 9 The territory planning authority must publish the following on the
- 10 authority website:
- 11 (a) the information mentioned in section 494 (1) (a) to (d)—
- 12 indefinitely;
- 13 (b) the associated documents for a development application
- 14 mentioned in section 497 (1) (a) and (k) (i)—for 5 years after
- 15 the day the development application is publicly notified under
- 16 division 7.5.4;
- 17 (c) the associated documents for a development application
- 18 mentioned in section 497 (1) (h), (j) and (k) (ii)—for 5 years
- 19 after the day notice of the decision on the development
- 20 application is given under section 193.
- 21 **497 Meaning of *associated document*—pt 14.1**
- 22 (1) For this part, each of the following is an *associated document* for a
- 23 development application (other than an application that is
- 24 withdrawn):
- 25 (a) information and documents required to accompany an
- 26 application under the following provisions:
- 27 (i) section 164 (2) (c);
- 28 (ii) schedule 2, part 2.2, item 11;

- 1 (iii) schedule 2, part 2.2, item 12;
2 (iv) schedule 2, part 2.2, item 13;
3 (v) schedule 2, part 2.2, item 14;
4 (vi) schedule 2, part 2.2, item 15;
5 (b) if the territory planning authority asks for more information
6 under section 165—the information given to the authority;
7 (c) if the territory planning authority amends an application under
8 section 166—the information and documents submitted under
9 section 164 (2);
10 (d) if the territory planning authority corrects an application under
11 section 167—the written notice of the correction;
12 (e) an agreement mentioned in section 168 (2) (b);
13 (f) if the territory planning authority refers an application to the
14 conservator of flora and fauna under section 168 (1) (c)—the
15 advice of the conservator given under section 170;
16 (g) if a representation is made under section 177 about an
17 application—the representation (other than a representation that
18 is withdrawn);
19 *Note* A person who makes a representation may apply to have the
20 representation excluded from the public register (see s 498).
21 (h) the notice of the decision on an application given under
22 section 193;
23 (i) if the applicant for an application that was refused makes a
24 reconsideration application under section 195—any information
25 given in the reconsideration application;
26 (j) if the territory planning authority reconsiders a decision to
27 refuse to approve an application under section 196—the notice
28 of the decision on the reconsideration given under section 198;

- 1 (k) a plan, drawing or specification of a proposed building, structure
2 or earthworks if the plan, drawing or specification—
- 3 (i) is part of the application (whether as originally made or as
4 amended); or
- 5 (ii) is approved as part of the approval of the application under
6 section 182; or
- 7 (iii) is required to be prepared by the applicant under a
8 condition of an approval before the development, or a
9 stated part of it, starts;
- 10 (l) if an inquiry panel inquires about an EIS for the development
11 proposal to which the application relates—the inquiry panel
12 report given to the Minister under section 132;
- 13 (m) if the decision on the application is reviewed by the ACAT—the
14 ACAT decision.
- 15 (2) For this part, each of the following is an *associated document* for a
16 development approval:
- 17 (a) if the approval-holder applies under section 195 for
18 reconsideration of the decision to approve the development
19 subject to a condition—any information included in the
20 application;
- 21 (b) if the territory planning authority reconsiders the decision to
22 approve the development subject to conditions—the notice of
23 the decision on the reconsideration given under section 198;
- 24 (c) if the territory planning authority corrects the approval under
25 section 200—the notice about the correction;
- 26 (d) if the approval-holder applies to amend the approval under
27 section 202—any information included in the application;

- 1 (e) a plan, drawing or specification of a proposed building, structure
2 or earthworks if the plan, drawing or specification is required to
3 be prepared by the applicant under a condition of an approval
4 before the development, or a stated part of it, starts.
- 5 (3) However, for this part, an *associated document* does not include—
- 6 (a) a plan, drawing or specification of any residential part of a
7 building or proposed building, other than a plan, drawing or
8 specification that shows only the height and external
9 configuration of the building or proposed building; or
- 10 (b) information in relation to which an exclusion application has
11 been approved under section 498 (Restrictions on information
12 for commercial or safety reasons); or
- 13 (c) information that must not be made available to the public under
14 section 499 (Restrictions on information for security reasons).

Part 14.2 Restrictions on availability of information

498 Restrictions on information for commercial or safety reasons

- (1) This section applies to a document given to the territory planning authority under this Act.

Examples

- 1 a development application
- 2 a representation about a development application
- 3 a draft EIS

- (2) The person giving the document may apply in writing to the territory planning authority for part of the document to be excluded from being made available to the public.

- (3) The territory planning authority may approve or refuse to approve the application.

- (4) However, the territory planning authority may approve the application only if satisfied that the part of the document to which the application relates contains information—

- (a) the publication of which would disclose a trade secret; or
- (b) the publication of which would, or could reasonably be expected to—

(i) endanger the life or physical safety of any person; or

(ii) lead to damage to, or theft of, property.

- (5) If the territory planning authority approves an application in relation to part of the document, the part must not be made available to the public.

- 1 (6) If part of the document is excluded from the copy of the document
2 made available to the public, the copy must include a statement to the
3 effect that an unmentioned part of the document has been excluded to
4 protect the confidentiality of information included in the part.

5 **499 Restrictions on information for security reasons**

- 6 (1) This section applies if the Minister responsible for the administration
7 of justice, or the Commonwealth Attorney-General, certifies in
8 writing to the territory planning authority that the publication of part
9 of a document (the *relevant part*) might—
10 (a) jeopardise national security, including by jeopardising the
11 operations of a security organisation; or
12 (b) expose staff of a security organisation to risk of injury; or
13 (c) expose the public to risk of injury; or
14 (d) expose property to risk of damage.
- 15 (2) The relevant part of the document must not be made available to the
16 public.
- 17 (3) Each copy of the document made public must include a statement to
18 the effect that an unmentioned part of the document has been
19 excluded under this section.
- 20 (4) In this section:
- 21 *security organisation* means any of the following:
- 22 (a) the Australian Federal Police;
23 (b) the Australian Security Intelligence Organisation;
24 (c) the Australian Secret Intelligence Service;
25 (d) the police force or service of a State;

26 *Note* *State* includes the Northern Territory (see [Legislation Act](#), dict,
27 pt 1).

Chapter 14
Part 14.2

Access to information
Restrictions on availability of information

Section 499

- 1 (e) an entity established under a law of a State to conduct criminal
2 investigations or inquiries;
3 (f) any other entity prescribed by regulation.

Chapter 15 Notification and review of decisions

500 Definitions—ch 15

In this chapter:

decision-maker, for a reviewable decision, means—

- (a) for a decision of an entity that is required, as a condition of a development approval, to be satisfied in relation to the undertaking of the development or a stated stage of the development—the entity whose satisfaction is required; or
- (b) for a decision under section 333 (1) (b) (i) or (ii) (Non-standard chargeable variations—reconsideration)—the commissioner for revenue; or
- (c) in any other case—the territory planning authority.

eligible entity, for a reviewable decision—

- (a) means an entity mentioned in schedule 6, part 6.2, column 3 for the decision; and
- (b) in relation to a development application or development approval—
 - (i) includes the lessee if the applicant is not the lessee; and
 - (ii) includes the sublessee if the applicant is not the sublessee; but
- (c) in relation to a matter mentioned in schedule 7, part 7.2 (Matters exempt from third party ACAT review)—means the applicant for development approval for the matter.

interested entity, for a reviewable decision, means an entity mentioned in schedule 6, part 6.2, column 4 for the decision.

1 **reviewable decision** means a decision mentioned in schedule 6,
2 part 6.2, column 2 made by a decision-maker.

3 **501 Reviewable decision notices**

4 If a decision-maker makes a reviewable decision, the decision-maker
5 must give a reviewable decision notice to—

- 6 (a) each eligible entity for the decision; and
7 (b) each interested entity for the decision.

8 *Note* The requirements for reviewable decision notices are prescribed under
9 the *ACT Civil and Administrative Tribunal Act 2008*.

10 **502 Applications for review**

11 An eligible entity for a reviewable decision may apply to the ACAT
12 for review of the decision.

13 **503 Applications for review by third parties**

14 (1) This section applies to a reviewable decision in relation to a
15 development application if the eligible entity for the decision is not
16 the applicant for the development application.

17 (2) Despite the *ACT Civil and Administrative Tribunal Act 2008*,
18 section 10 (Making an application), an application for review must be
19 made not later than 20 working days after the day the entity was given
20 notice of the decision.

21 (3) The *ACT Civil and Administrative Tribunal Act 2008*,
22 section 10 (3) (b), does not apply to the application for review.

23 (4) The period for making the application for review may not be extended
24 under the *ACT Civil and Administrative Tribunal Act 2008*.

- 1 **504 ACAT review—time for making application for deemed**
2 **decisions**
- 3 (1) This section applies to a reviewable decision under section 295
4 (Decision about whether lease concessional).
- 5 (2) The application for review must be made not later than 20 working
6 days after the 20 working-day period mentioned in section 295 (5).

Chapter 16 Miscellaneous

505 Declaration of authority website

- (1) The Minister may declare a website to be the territory planning authority website (the *authority website*).
- (2) A declaration is a notifiable instrument.

506 Custodianship map

- (1) The territory planning authority must create and maintain a map that identifies, and reflects who has administrative responsibility for, land in the ACT that is unleased land, public land or both (the *custodianship map*).
- (2) The custodianship map may include anything else the territory planning authority considers appropriate.

507 Damage etc to be minimised

- (1) In the exercise, or purported exercise, by an official of a function, the official must take all reasonable steps to ensure that the official, and any person assisting the official, causes as little inconvenience, detriment and damage as practicable.
- (2) If an official, or person assisting an official, damages anything in the exercise or purported exercise of a function, the official must give written notice of the particulars of the damage to the person the official believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under chapter 13 (Enforcement) in the absence of the occupier, the notice may be given by leaving it secured conspicuously at the premises.
- (4) In this section:

function means—

- (a) for an authorised person—a function under chapter 12 (Development offences and controlled activities); or

(b) for an inspector—a function under division 12.4.4 (Rectification work orders) or chapter 13 (Enforcement).

official means an authorised person or an inspector.

508 Compensation for exercise of enforcement powers

(1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function by an official or person assisting an official.

(2) Compensation may be claimed and ordered—

(a) in a proceeding for compensation brought in a court of competent jurisdiction; or

(b) in a proceeding for an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Examples—what may be prescribed

1 compensation is not payable for actions of authorised people that are unavoidable, like demolishing an unlawful structure if the rectification notice requires the demolition

2 compensation is payable if the damage is reasonably avoidable, like the accidental breaking of a window

(5) In this section:

function—see section 507 (4).

official—see section 507 (4).

- 1 **509 Enforcement actions unaffected by other approvals etc**
- 2 (1) To remove any doubt, the territory planning authority or an official is
- 3 not prevented from exercising a function in relation to a matter only
- 4 because any of the following have been issued in relation to the
- 5 matter:
- 6 (a) a development approval;
- 7 (b) a certificate of compliance;
- 8 (c) a certificate of occupancy.
- 9 (2) In this section:
- 10 *function*—see section 507 (4).
- 11 *official*—see section 507 (4).
- 12 **510 Evidentiary certificates—offsets register**
- 13 (1) The territory planning authority may give a signed certificate—
- 14 (a) stating that on a stated date, or during a stated period, a stated
- 15 area of land was or was not the subject of an offset; and
- 16 (b) if the land was the subject of an offset—including the details
- 17 kept in the offsets register about the land.
- 18 (2) A certificate under this section is evidence of the matters stated in it.
- 19 (3) Unless the contrary is proved, a document that purports to be a
- 20 certificate under this section is taken to be a certificate.
- 21 **511 Evidence of ending of lease**
- 22 (1) The territory planning authority may certify in writing that a lease
- 23 mentioned in the certificate has ended.
- 24 (2) The certificate is evidence of the matter it states.

512 Basic fences between leased and unleased land

(1) This section applies in relation to an open space boundary of a block of land if, whether before or after the commencement of this section, a development requirement in relation to the block requires the erection of a basic paling fence for the boundary.

(2) The development requirement is taken to have been complied with for the open space boundary if, instead of a basic paling fence, either of the following is erected:

(a) a fence that is exempt from requiring development approval;

(b) a fence in accordance with a notice under the *Common Boundaries Act 1981*, section 23 (Boundary between leased and unleased land).

(3) In this section:

basic paling fence means a fence that consists of not more than—

(a) a support structure; and

(b) timber palings only as the fence's panelling; and

(c) a capping rail.

Examples—fences that are not basic paling fences

1 a paling fence with a lattice extension or panelling

2 a fence with brick piers separating paling panels

development requirement, in relation to a block of land, means—

(a) a condition in a lease for the block of land; or

(b) a requirement of a development approval or a corresponding approval under a repealed territory law.

open space boundary means a boundary between leased and unleased land.

513 Rights to extract minerals

- (1) The territory planning authority may, by a lease or licence, grant a person the right to extract minerals from stated land.
- (2) The provisions of the lease or licence are the provisions agreed between the parties.
- (3) For the *Personal Property Securities Act 2009* (Cwlth), section 10, definition of *personal property*, a right granted by licence under subsection (1) is not personal property.

514 Use and disclosure of protected information

- (1) An information holder commits an offence if—
 - (a) the information holder uses information; and
 - (b) the information is protected information about someone else; and
 - (c) the information holder is reckless about whether the information is protected information about someone else.

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

- (2) An information holder commits an offence if—
 - (a) the information holder does something that discloses information; and
 - (b) the information is protected information about someone else; and
 - (c) the information holder is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being disclosed to someone else.

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

3 (3) Subsections (1) and (2) do not apply if the information holder uses or
4 discloses protected information about someone else (the ***protected***
5 ***person***)—

6 (a) under this Act or another law applying in the ACT; or

7 (b) in relation to the exercise of a function, as an information holder,
8 under this Act or another law applying in the ACT; or

9 (c) in a court proceeding; or

10 (d) with the protected person's consent.

11 *Note* The defendant has an evidential burden in relation to the matters
12 mentioned in s (3) (see [Criminal Code](#), s 58).

13 (4) An information holder need not disclose protected information to a
14 court, or produce a document containing protected information to a
15 court, unless it is necessary to do so for this Act or another law
16 applying in the ACT.

17 (5) In this section:

18 ***court*** includes a tribunal, authority or person having power to require
19 the production of documents or the answering of questions.

20 ***disclose*** includes communicate or publish.

21 ***information*** means information, whether true or not, in any form and
22 includes an opinion and advice.

23 ***information holder*** means—

24 (a) a person who is or has been—

25 (i) the chief planner; or

26 (ii) a member of staff of the territory planning authority; or

27 (iii) a member of the staff of the commission; or

Section 515

1 (b) anyone else who exercises or exercised a function under this
2 Act.

3 *produce* includes allow access to.

4 *protected information* means information about a person that is
5 disclosed to, or obtained by, an information holder because of the
6 exercise of a function under this Act by the information holder or
7 someone else.

8 *use*, in relation to information, includes make a record of the
9 information.

10 **515 Ministerial guidelines**

11 (1) The Minister may approve guidelines for the exercise of any power
12 by the Minister under this Act.

13 (2) The Minister may consider advice from the territory planning
14 authority before approving guidelines.

15 (3) A guideline is a notifiable instrument.

16 **516 Construction of outdated references**

17 (1) In any Act, instrument made under an Act or document, a reference
18 to a repealed Act is, in relation to anything to which this Act applies,
19 a reference to this Act.

20 (2) In any Act, instrument made under an Act or document, a reference
21 to a provision of a repealed Act is, in relation to anything to which
22 this Act applies, a reference to the corresponding provision of this
23 Act.

24 (3) In any Act, instrument made under an Act or document, a reference
25 to anything that is no longer applicable because of the repeal of the
26 repealed Act, and for which there is a corresponding thing under this
27 Act, is taken to be a reference to the thing under this Act, if the context
28 allows and if otherwise appropriate.

1 (4) In this section:

2 *repealed Act* means—

3 (a) the *Land (Planning and Environment) Act 1991* (repealed); or

4 (b) the *Planning and Development Act 2007* (repealed).

5 **517 Expiry of University of NSW lease provisions**

6 (1) This section applies if a lease of land mentioned in section 270 (2) (g)
7 is not granted to the University of NSW by 8 July 2025.

8 (2) This section and the following provisions expire on 8 July 2025:

9 (a) section 270 (2) (g) (Payment for leases generally);

10 (b) section 276 (2) (b) (Restriction on transfer, assignment and
11 parting with possession);

12 (c) section 278 (Restriction on transfer, assignment and parting with
13 possession—certain University of NSW leases);

14 (d) section 279 (Approval to transfer, assign, or part with
15 possession—certain University of NSW leases);

16 (e) schedule 3, part 3.2, item 37;

17 (f) schedule 6, part 6.2, item 84, column 2, everything after “direct
18 sale”;

19 (g) dictionary, definition of *University of NSW*.

20 **518 Determination of fees**

21 (1) The Minister may determine fees for this Act

22 (2) A determination is a disallowable instrument.

- 1 **519 Regulation-making power**
- 2 (1) The Executive may make regulations for this Act.
- 3 (2) A regulation may make provision about a matter by applying,
4 adopting or incorporating (with or without change) an instrument, or
5 a provision of an instrument, as in force from time to time.
- 6 (3) The [Legislation Act](#), section 47 (6) does not apply in relation to an
7 instrument applied, adopted or incorporated as in force from time to
8 time under a regulation.
- 9 (4) A regulation may create offences and fix maximum penalties of not
10 more than 30 penalty units for the offences.
- 11 (5) In this section:
- 12 *instrument* includes an Australian Standard or an Australian/New
13 Zealand Standard.

Chapter 20 Transitional

Note This chapter, among other things, preserves the operation of certain parts of the legislative scheme enacted under the repealed *Planning and Development Act 2007*. If a matter relating to the operation of the repealed legislative scheme is not provided for in this chapter or another territory law, the *Legislation Act*, s 84 applies. That provision provides that the repeal of the *Planning and Development Act 2007* does not affect the previous operation of the repealed Act or anything done, begun or suffered under the repealed Act and does not affect an existing right, privilege or liability acquired, accrued or incurred under the repealed Act. Unless otherwise provided for in this chapter or another territory law, an investigation, proceeding or remedy in relation to an existing right, privilege or liability under the repealed Act may be started, exercised, continued or completed, and the right, privilege or liability may be enforced and any penalty imposed, as if the repeal had not happened.

Part 20.1 Transitional—general

600 Definitions—ch 20

In this chapter:

commencement day means the day this Act, section 3 commences.

repealed Act means the *Planning and Development Act 2007*.

601 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.

1 (3) A regulation under subsection (2) has effect despite anything
2 elsewhere in this Act or another territory law.

3 *Note* A transitional provision under s (1) continues to have effect after its
4 repeal, however, a modification under s (2) has no ongoing effect after its
5 repeal (see [Legislation Act](#), s 88).

6 **602 Expiry—ch 20**

7 This chapter (unless otherwise stated for a particular provision)
8 expires 3 years after the commencement day.

9 *Note* A transitional provision is repealed on its expiry but continues to have
10 effect after its repeal (see [Legislation Act](#), s 88).

1 **Part 20.2** **Transitional—strategic and**
2 **spatial planning**

3 **603 Planning strategy**

- 4 (1) The planning strategy in schedule 1 of the *Planning and Development*
5 *(Planning Strategy) Notice 2018* (NI2018-665) is taken to be the
6 planning strategy under this Act, section 36.
- 7 (2) The *Planning and Development (Planning Strategy) Notice 2018*
8 (NI2018-665) is taken to be a notifiable instrument made under this
9 Act, section 36 (4).

10 **604 District strategy**

11 Public consultation undertaken before the commencement day is
12 taken to be public consultation for section 38 (3).

Part 20.3 Transitional—territory plan

605 Territory plan—preparation

- (1) For section 45 (Territory plan), the territory planning authority must prepare a draft of the territory plan in accordance with this part not later than 6 months after this section commences.
- (2) Division 5.2.1 (Preliminary—pt 5.2), division 5.2.3 (Consultation) and division 5.2.4 (Action after consultation about draft major plan amendments) apply to the preparation of the draft territory plan (with necessary changes) as if—
 - (a) a reference to a major plan amendment were a reference to the territory plan; and
 - (b) a reference to the Minister were a reference to the Executive.
- (3) Section 60 (f) (Draft major plan amendments—consultation) does not apply to the preparation of the draft territory plan.

606 Draft territory plan to be given to Executive etc

- (1) This section applies to the draft territory plan prepared under section 605—
 - (a) after the consultation period for the draft territory plan ends; and
 - (b) as revised in accordance with—
 - (i) section 64 (2) (Revision and withdrawal of draft major plan amendments) as applied under section 605; or
 - (ii) a request under section 607 (1) (b).
- (2) The territory planning authority must give the draft territory plan (or revised draft territory plan) to the Executive for making, together with the following documents:
 - (a) the background papers relating to the draft territory plan;

- 1 (b) a written report (a *consultation report*) about the authority's
2 consultation with the following:
- 3 (i) the public;
- 4 (ii) the national capital authority;
- 5 (iii) the conservator of flora and fauna;
- 6 (iv) the environment protection authority;
- 7 (v) the heritage council;
- 8 (c) a copy of any written comments (including consultation
9 comments) about the draft territory plan received from an entity
10 mentioned in paragraph (b).
- 11 (3) The consultation report must include the issues raised in any
12 consultation comments about the draft territory plan.

13 **607 Territory plan—Executive's powers**

- 14 (1) After the Executive receives the draft territory plan (or revised draft
15 territory plan) under section 606 (2), the Executive must—
- 16 (a) for section 45 (Territory plan), make the territory plan in the
17 form given; or
- 18 *Note* The territory plan is a notifiable instrument (see s 45 (2)).
- 19 (b) return it to the territory planning authority and request the
20 authority to do 1 or more of the following:
- 21 (i) conduct further stated consultation;
- 22 (ii) consider any change suggested by the Executive;
- 23 (iii) change the draft territory plan in a stated way.

- 1 (2) Before taking action under subsection (1), the Executive must
2 consider the following:
- 3 (a) the planning strategy;
- 4 (b) any relevant district strategy;
- 5 (c) the background papers, consultation report and written
6 comments mentioned in section 606 (2).
- 7 (3) The territory planning authority must publish on the authority
8 website—
- 9 (a) the making of the territory plan under subsection (1) (a); and
10 (b) a request under subsection (1) (b).

11 **608 Territory plan to be given to Assembly committee**

- 12 (1) After the Executive makes the territory plan under section 607 (1) (a),
13 the Minister must give the plan, as notified under the [Legislation Act](#),
14 to the relevant Assembly committee for inquiry.
- 15 (2) The relevant Assembly committee must—
- 16 (a) decide whether to hold an inquiry, and give the Minister written
17 notice of its decision, within 7 days after receiving the territory
18 plan; and
- 19 (b) if the committee decides to hold an inquiry—report to the
20 Minister on the territory plan within 6 months after receiving it.

21 **609 Interim territory plan**

- 22 (1) At the same time the Minister gives the territory plan to the relevant
23 Assembly committee under section 608, the Minister may present the
24 territory plan, as notified under the [Legislation Act](#), to the Legislative
25 Assembly for approval as an interim territory plan.
- 26 (2) The Legislative Assembly may, by resolution, approve the territory
27 plan as an interim territory plan, whether or not the relevant Assembly
28 committee has given a report mentioned in section 608 (2) (b).

- 1 (3) Despite anything in the territory plan or the [Legislation Act](#),
2 section 73, an interim territory plan commences on a day fixed by the
3 Minister by written notice.

4 **610 Approval or confirmation of territory plan**

- 5 (1) If the relevant Assembly committee reports to the Minister under
6 section 608 (2) (b), the Minister—
7 (a) must consider the report; and
8 (b) may amend the territory plan in response to the report; and
9 (c) may present the amended territory plan to the Legislative
10 Assembly for approval as the territory plan, in place of the
11 interim territory plan approved under section 609.
12 (2) Alternatively, the Minister may move a motion to confirm the interim
13 territory plan under section 609 as the territory plan if the relevant
14 Assembly committee—
15 (a) gives notice of its decision not to hold an inquiry under
16 section 608 (2) (a); or
17 (b) reports to the Minister under section 608 (2) (b) and the Minister
18 does not amend the territory plan; or
19 (c) does not report on the plan within the 6-month period mentioned
20 in section 608 (2) (b).
21 (3) The Legislative Assembly may, by resolution—
22 (a) approve the amended territory plan presented under
23 subsection (1) (c) as the territory plan; or
24 (b) confirm the interim territory plan as the territory plan.
25 (4) Despite anything in the territory plan or the [Legislation Act](#),
26 section 73, a territory plan approved under subsection (3) (a)
27 commences on a day fixed by the Minister by written notice.

- 1 (5) An amendment incorporated in the amended territory plan approved
2 in accordance with subsection (3) (a) is taken—
3 (a) to be a notifiable instrument made under section 45 (Territory
4 plan); and
5 (b) to amend the territory plan made in accordance with
6 section 607 (1) (a).

7 **611 Consultation before commencement**

8 Consultation undertaken before the commencement of this section is
9 taken to be consultation for this part.

10 **612 Expiry—pt 20.3**

- 11 This part expires on the day the territory plan—
12 (a) is confirmed under section 610 (3) (b); or
13 (b) commences under section 610 (4).

Part 20.4 Transitional—development applications and approvals

613 Development applications made before commencement day

- (1) This section applies if, before the commencement day—
- (a) a person made a development application under the repealed Act, chapter 7 (Development approvals); and
 - (b) the application has not been finally decided.
- (2) The repealed Act continues to apply in relation to the development application despite its repeal.
- (3) However, the development application may be amended under the repealed Act, section 144 only if the applicant asks for the amendment not later than 6 months after the commencement day.
- (4) Also, the development application is taken to have been withdrawn if the application was made under any of the following provisions of the repealed Act:
- (a) section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared);
 - (b) section 137AB (Applications in anticipation of territory plan variation—made after draft plan variation prepared);
 - (c) section 137AD (Applications for development encroaching on adjoining territory land if development prohibited)—if the application was accompanied by a proposed technical amendment under the repealed Act, section 90B (Rezoning—development encroaching on adjoining territory land).

(5) In this section:

finalised means—

(a) for a non-ACAT reviewable decision—

- (i) a decision on the reconsideration application has been made under the repealed Act, section 193 (1) (b); or
- (ii) the original decision has been taken to be confirmed under the repealed Act, section 194 (No action by authority within time); or

(b) for a review by the ACAT—

- (i) the ACAT has made an order in relation to the decision under the [ACT Civil and Administrative Tribunal Act 2008](#), section 68 (3) (Review of decisions); or
- (ii) the application for review has been withdrawn, dismissed or struck out.

finally decided—a development application under the repealed Act, chapter 7 is ***finally decided*** if—

- (a) the application is approved under the repealed Act, section 162 (Deciding development applications); or
- (b) if the application is approved subject to a condition or is refused—
 - (i) the review period has ended and no application for review has been made; or
 - (ii) if an application for review has been made in the review period—the review has been finalised.

non-ACAT reviewable decision means a decision on a development application mentioned in the repealed Act, section 175 (1) (b) (ii).

original decision—see the repealed Act, section 191 (1) (a).

reconsideration application—see the repealed Act, section 191 (3).

1 **review** means—

2 (a) for a non-ACAT reviewable decision—reconsideration of a
3 decision in relation to the development application under the
4 repealed Act, division 7.3.10; and

5 (b) in any other case—review by the ACAT.

6 **review period** means—

7 (a) for a non-ACAT reviewable decision—the relevant period
8 within which a reconsideration application must be made under
9 the repealed Act, section 191 (5); and

10 (b) for a review by the ACAT—the relevant period within which an
11 application for review of a decision must be made under the [ACT](#)
12 [Civil and Administrative Tribunal Act 2008](#).

13 **614 Development approvals under repealed Act**

14 (1) This section applies if—

15 (a) before the commencement day, a person has been given a
16 development approval under the repealed Act, chapter 7
17 (Development approvals); or

18 (b) the territory planning authority or the Minister approves a
19 development application under the repealed Act, chapter 7 on or
20 after the commencement day because of section 613.

21 (2) The development approval continues in force until the time when the
22 approval would have ended under the repealed Act (including any
23 period extended under the repealed Act, section 188 (2)).

24 (3) The repealed Act, including the following provisions, continues to
25 apply in relation to the development approval despite its repeal:

26 (a) if the development approval is subject to an offset condition—
27 the repealed Act, division 7.3.6A;

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- 1 (b) if the development approval relates to a development application
2 for a chargeable variation of a nominal rent lease—the repealed
3 Act, division 9.6.3.

4 *Note* Despite s (3), an application to amend the development approval under
5 the repealed Act may only be made within 6 months after the
6 commencement day. After the 6-month period, an application to amend
7 the development approval may only be made under this Act, s 202 as if
8 the development approval were given under this Act. If the development
9 approval is amended in accordance with s 616 (2), the development
10 approval is taken to have been given under this Act and this section no
11 longer applies to the development approval.

12 **615 Applications to amend development approvals made**
13 **before commencement day**

- 14 (1) This section applies if, before the commencement day—
15 (a) a person applies to amend a development approval under the
16 repealed Act, section 197 (Applications to amend development
17 approvals); and
18 (b) the decision-maker has not finally decided the application.
19 (2) The repealed Act continues to apply in relation to the application
20 despite its repeal.
21 (3) In this section:
22 *decision-maker*—see the repealed Act, section 195A.
23 *finally decided*—see section 613 (5).

24 **616 Applications to amend development approvals under**
25 **repealed Act at least 6 months after commencement day**

- 26 (1) This section applies if—
27 (a) a person is given a development approval under the repealed
28 Act, chapter 7 (Development approvals); and

- 1 (b) the development proposal for which the approval is given
2 changes so that it is not covered by the development approval;
3 and
4 (c) at least 6 months has passed after the commencement day.
- 5 (2) Despite section 614, an application to amend the development
6 approval may only be made under this Act, section 202 as if the
7 development approval were given under this Act.
- 8 (3) If the decision-maker decides to amend the development approval
9 under this Act, section 203, the amended approval—
10 (a) is taken to be an approval under this Act, chapter 7; and
11 (b) ends when the approval would have ended under the repealed
12 Act if the approval had not been amended.

13 **617 Declarations for development encroaching on adjoining**
14 **territory land before commencement day**

15 A declaration under the repealed Act, section 137AC (Declaration for
16 development encroaching on adjoining territory land if development
17 prohibited) as in force immediately before the commencement day is
18 taken to be a declaration under this Act, section 157.

1 **Part 20.5** **Transitional—existing rights to**
2 **use land, buildings and**
3 **structures**

4 **618 Existing rights to use land etc not affected**

5 (1) This section applies if, before the commencement day—

6 (a) a person had a right to use land, or a building or structure on the
7 land, in a particular way; and

8 (b) the person's right to use the land, building or structure was
9 authorised by any of the following:

10 (i) a lease granted or continued under the repealed Act;

11 (ii) a preserved lease;

12 (iii) a licence granted or continued under the repealed Act;

13 (iv) a public unleased land permit under the *Public Unleased*
14 *Land Act 2013*;

15 (v) a sign approval or work approval under the *Public*
16 *Unleased Land Act 2013*.

17 (2) This section also applies if—

18 (a) before the commencement day—

19 (i) a person had a right to use land, or a building or structure
20 on the land in a particular way; and

21 (ii) the person's right to use the land, building or structure was
22 authorised by a lease (the *old lease*); and

23 (iii) the old lease has expired; and

24 (b) the person applies for the grant of a further lease in relation to
25 the old lease under section 285; and

- 1 (c) section 285 applies to the person's application because of
2 section 622.
- 3 (3) The use of the land, building or structure in the way authorised is
4 lawful, despite any other provision of this Act.
- 5 (4) However, this section does not apply to a use of land, or a building or
6 structure on the land, if the use—
- 7 (a) is an authorised use under part 7.2 (Exempt development); but
- 8 (b) is an exception to section 145 (1) (Exempt development—
9 authorised use) because section 146 (Authorised use that is not
10 exempt) applies in relation to the authorised use.

1 **Part 20.6** **Transitional—leases and**
2 **licences**

3 **619** **Status of leases or licences in force before**
4 **commencement day**

- 5 (1) This section applies to a lease or a licence—
6 (a) granted or continued, or purported to have been granted or
7 continued under the repealed Act; and
8 (b) in force immediately before the commencement day.
9 (2) The lease or licence is taken to have been granted under this Act.

10 **620** **Continued application of certain repealed Acts and**
11 **provisions**

- 12 (1) This section applies to certain leases continued under section 619.
13 (2) The *Australian National University (Leases) Act 1967* (repealed)
14 continues to apply in relation to a lease—
15 (a) granted under, or continued in force by, that Act; and
16 (b) in force immediately before the commencement day.
17 (3) The *Church Lands Leases Act 1924* (repealed), sections 5, 6, 8 and 10
18 continue to apply in relation to a lease—
19 (a) granted under that Act; and
20 (b) in force immediately before the commencement day.
21 (4) In a continuing CALA lease, a reference to *improvements* is a
22 reference to improvements other than improvements by way of
23 clearing, draining, grading, filling, excavating or levelling made by
24 the Territory or the Commonwealth or the cost of which the Territory
25 or the Commonwealth has paid.

- 1 (5) The following sections of the *City Area Leases Act 1936* (repealed),
2 continue to apply:
- 3 (a) to the extent that the section relates to a variation of a continuing
4 CALA lease in relation to which notice under that *Act*,
5 section 18A was given before the commencement day—
6 section 18B;
- 7 (b) to the extent that the section relates to a continuing CALA lease
8 in relation to which notice under the section was given before
9 the commencement day—section 22;
- 10 (c) to the extent that the section relates to a continuing CALA lease
11 mentioned in that *Act*, section 28A (1)—section 28A;
- 12 (d) to the extent that the section relates to a continuing CALA lease
13 mentioned in that *Act*, section 28DA (1)—section 28DA;
- 14 (e) to the extent that the section relates to a sublease mentioned in
15 that *Act*, section 30A (2) and in force immediately before
16 2 April 1992—section 30A.
- 17 (6) Despite the repeal of the *Leases (Special Purposes) Act 1925*
18 (repealed), that *Act*, sections 5AC, 5AD, 5A and 5B continue to apply
19 in relation to a lease—
- 20 (a) granted under that *Act*, section 3 (2) as in force immediately
21 before 11 May 1989; and
- 22 (b) in force immediately before the commencement day.
- 23 (7) The *Leases (Special Purposes) Act 1925* (repealed), section 5BA (6)
24 continues to apply in relation to a lease—
- 25 (a) granted under that *Act*; and
- 26 (b) in force immediately before the commencement day.

- 1 (8) In this section:
- 2 *continuing CALA lease* means a lease granted or continued, or
- 3 purported to have been granted or continued, under the *City Area*
- 4 *Leases Act 1936* (repealed).
- 5 **621 Grants of leases commenced but not completed before**
- 6 **commencement day**
- 7 (1) This section applies if, before the commencement day—
- 8 (a) a pre-grant process has started in relation to the grant of a lease
- 9 by auction, tender, ballot or direct sale under the repealed Act;
- 10 and
- 11 (b) a lease to which the pre-grant process relates has not been
- 12 granted under the repealed Act.
- 13 (2) To the extent that the pre-grant process is necessary for, or relevant
- 14 to, the grant of a lease under this Act, part 10.2, the process is taken
- 15 to have been done under this Act.
- 16 (3) In this section:
- 17 *pre-grant process* includes—
- 18 (a) the planning and land authority giving notice of an auction,
- 19 tender, ballot or direct sale; and
- 20 (b) a government entity entering into an agreement in relation to the
- 21 grant of a lease; and
- 22 **Example**
- 23 a deed of agreement with a developer for the development of land
- 24 (c) a community organisation applying for the grant of a lease by
- 25 direct sale.

1 **622 Applications for grant of further leases**

- 2 (1) Subsection (2) applies if, before the commencement day—
- 3 (a) a person applied for the grant of a further lease under the
- 4 repealed Act, section 254 (Grant of further leases); and
- 5 (b) the application has not been decided.
- 6 (2) The repealed Act continues to apply in relation to the application
- 7 despite its repeal.
- 8 (3) If a further lease is granted on the application, the lease is taken to be
- 9 a lease granted under this Act, section 285.
- 10 (4) Subsection (5) applies if—
- 11 (a) a lease expired not more than 6 months before the
- 12 commencement day; and
- 13 (b) before the commencement day, the lessee had not applied to the
- 14 planning and land authority for the grant of a further lease of the
- 15 land.
- 16 (5) The lessee may apply to the territory planning authority under
- 17 section 285 for a further lease as if that section applied to the lease
- 18 when it expired.

19 **623 Applications by community organisations for direct sale**

20 **before 6 December 2017**

- 21 (1) This section applies if—
- 22 (a) before 6 December 2017, a community organisation had
- 23 applied, in writing, for the grant of a lease by direct sale under
- 24 the repealed Act, section 238 (1) (d) (Granting leases) (a *new*
- 25 *lease*); and
- 26 (b) immediately before 2 April 2020, the application had not been—
- 27 (i) withdrawn by the applicant; or

- 1 (ii) decided by the planning and land authority and either—
2 (A) the lease granted; or
3 (B) the applicant notified that the application was refused.
- 4 (2) The repealed Act, as in force immediately before 2 April 2020,
5 continues to apply in relation to the application until—
6 (a) the application is withdrawn by the applicant; or
7 (b) if the territory planning authority decides to grant the lease—the
8 lease is granted; or
9 (c) if the territory planning authority decides to refuse the
10 application—the later of—
11 (i) the end of the period in which an application for review of
12 the decision can be made; or
13 (ii) an application for review is finalised.
- 14 (3) In this section, a reference to an application includes a reference to an
15 application for confirmation of eligibility for the grant of a lease by
16 direct sale.
- 17 (4) This section expires on 2 April 2025.

18 **624 Applications to vary concessional leases made before**
19 **2 April 2020**

- 20 (1) This section applies if—
21 (a) before 2 April 2020, a person made a development application
22 to which the repealed Act, division 9.4.2 (Varying concessional
23 leases to remove concessional status) applies; and
24 (b) immediately before 2 April 2020, the application had not been—
25 (i) withdrawn by the applicant; or
26 (ii) decided by the planning and land authority.

- 1 (2) The repealed Act, section 261 (No decision on application unless
2 consideration in public interest), as in force immediately before
3 2 April 2020, continues to apply in relation to the application until—
- 4 (a) the application is withdrawn by the applicant; or
- 5 (b) the territory planning authority—
- 6 (i) approves the application without conditions; or
- 7 (ii) if the territory planning authority approves the application
8 subject to a condition or refuses the application—the later
9 of—
- 10 (A) the end of the period in which an application for
11 review of the decision can be made; or
- 12 (B) an application for review is finalised.
- 13 (3) This section expires on 2 April 2025.

14 **625 Applications for licences for unleased land made before**
15 **commencement day**

- 16 (1) This section applies if, before the commencement day—
- 17 (a) a person applied for a licence under the repealed Act,
18 section 302 (Applications for licences for unleased land); and
- 19 (b) the application has not been decided.
- 20 (2) The repealed Act continues to apply in relation to the application
21 despite its repeal.
- 22 (3) If a licence is granted on the application, the licence is taken to have
23 been granted under this Act, section 374.

1 **Part 20.7** **Transitional—building and**
2 **development provisions—**
3 **extension of time to complete**
4 **works**

5 **626 Extensions of time to complete works under repealed Act**

- 6 (1) This section applies if, before the commencement day—
7 (a) the repealed Act, section 298B (1) applies to a lease; and
8 (b) the time to complete works has been extended because of the
9 repealed Act, section 298B (2); and
10 (c) the planning and land authority has not extended the time to
11 complete the works to a stated time under the repealed Act,
12 section 298B (2) (a).
13 (2) Section 370 is taken to apply to the lease from the time the building
14 and development provision required the works to be completed and—
15 (a) any required fee paid in relation to the lease is taken to be
16 payment of the noncompliance fee; and
17 (b) any reduction or waiver of the required fee under the repealed
18 Act or the *Financial Management Act 1996*, section 131 (or an
19 application for a reduction or waiver) is taken to apply in
20 relation to the noncompliance fee.
21 (3) To remove any doubt, this Act, section 370 does not apply to a lease
22 if the planning and land authority refused to extend the time to
23 complete the works under the repealed Act, section 298B (2) (b).

627 Extensions of time to complete works under repealed Act—extension to another stated time

- (1) This section applies if, before the commencement day—
- (a) the repealed Act, section 298B (1) applies to a lease; and
 - (b) the planning and land authority has extended the time to complete the works to another stated time under the repealed Act, section 298B (2) (a).
- (2) Section 370 is taken to apply to the lease from the time the building and development provision required the works to be completed and—
- (a) any required fee paid in relation to the lease is taken to be payment of the noncompliance fee; and
 - (b) any reduction or waiver of the required fee under the repealed Act or the *Financial Management Act 1996*, section 131 (or an application for a reduction or waiver) is taken to apply in relation to the noncompliance fee; and
 - (c) the stated time is taken to be the new compliance time.

Part 20.8 **Transitional—environmental
significance opinions**

628 **Applications for environmental significance opinion
made before commencement day**

- (1) This section applies if, before the commencement day—
- (a) the proponent of a development proposal applied to the relevant agency for an environmental significance opinion under the repealed Act, section 138AA (2) (Impact track proposals if not likely to have significant adverse environmental impact); and
 - (b) the application has not been decided under the repealed Act, section 138AB (Deciding environmental significance opinion applications).
- (2) The repealed Act continues to apply in relation to the application despite its repeal.

629 **Environmental significance opinions given under
repealed Act**

- (1) This section applies if, before the commencement day—
- (a) a relevant agency gives an environmental significance opinion under the repealed Act, section 138AB (4) (a) or (b); and
 - (b) the opinion has not expired under the repealed Act, section 138AD (6).
- (2) This section also applies to an environmental significance opinion given under the repealed Act, on or after the commencement day, because of section 628.

- 1 (3) The environmental significance opinion—
- 2 (a) is taken to be an opinion given under this Act, section 138 (4) (a)
- 3 or (b); and
- 4 (b) expires 18 months after the day a notice including the text of the
- 5 opinion was notified under the repealed Act.

Part 20.9 **Transitional—design review panel**

630 **Consultation with design review panel before commencement day**

- (1) This section applies if, before the commencement day—
- (a) a proponent for a prescribed development proposal consults with the design review panel under the repealed Act, section 138AL (Consultation with design review panel); and
 - (b) a development application has not been made in relation to the proposal.
- (2) The proponent is, on the commencement day, taken to have consulted with the design review panel under this Act, section 98.

631 **Design review panel consideration before commencement day**

- (1) This section applies if, before the commencement day—
- (a) the design review panel takes action in relation to a development proposal under the repealed Act, section 138AM (2) (b) (Design review panel may provide design advice); and
 - (b) a development application has not been made in relation to the proposal.
- (2) The action is taken to have been done under this Act, section 99 (2) (b).
- (3) Despite this Act, section 99 (3), if design advice is provided under the repealed Act and the proponent does not lodge a development application for the development proposal within 18 months after the design advice is provided under the repealed Act, the design advice expires.

Part 20.10 Transitional—environmental impact statements

632 Applications for EIS exemption made before commencement day

- (1) This section applies if, before the commencement day—
- (a) the proponent of a development proposal applied to the Minister for an EIS exemption for the proposal under the repealed Act, section 211B (2); and
 - (b) the application has not been decided under the repealed Act, section 211H (EIS exemption—decision).
- (2) The repealed Act continues to apply in relation to the application despite its repeal.

633 EIS exemptions granted under repealed Act

- (1) This section applies if, before the commencement day—
- (a) an EIS exemption is granted under the repealed Act, section 211H in relation to a development proposal; and
 - (b) the EIS exemption has not expired under the repealed Act, section 211I; and
 - (c) a development application has not been made in relation to the proposal.
- (2) This section also applies to an EIS exemption granted under the repealed Act, on or after the commencement day, because of section 632.
- (3) The EIS exemption—
- (a) is taken to be an EIS finalised under this Act, section 126; and
 - (b) despite this Act, section 129, expires on the relevant day.

- 1 (4) In this section:
- 2 *notified* means notified under the repealed Act, section 211H.
- 3 *recent study*—see the repealed Act, section 211A.
- 4 *relevant day*, for an EIS exemption granted under the repealed Act,
- 5 section 211H, means—
- 6 (a) if the recent study relevant to the EIS exemption is an
- 7 environmental impact statement prepared under the [EPBC Act](#),
- 8 part 8 (Assessing impacts of controlled actions) and approval of
- 9 action in relation to the development was given under that Act,
- 10 part 9 (Approval of actions)—when the approval expires, or
- 11 5 years after the day the exemption is notified, whichever
- 12 happens later; or
- 13 (b) if the recent study relevant to the EIS exemption is an endorsed
- 14 policy, plan or program under the [EPBC Act](#), part 10 (Strategic
- 15 assessments) and approval of action in relation to the
- 16 development was given under that [Act](#), part 10—when the
- 17 approval expires, or 5 years after the day the exemption is
- 18 notified, whichever happens later; or
- 19 (c) in any other case—
- 20 (i) 5 years after the day the EIS exemption was notified; or
- 21 (ii) if a later day is prescribed by regulation under the repealed
- 22 Act, section 211I—the later day.

23 **634 EIS completed under repealed Act**

- 24 (1) This section applies if—
- 25 (a) an EIS is completed under the repealed Act, section 209; and
- 26 (b) the EIS has not expired under the repealed Act, section 227A.

- 1 (2) The EIS—
2 (a) is taken to be an EIS finalised under this Act, section 126; and
3 (b) despite this Act, section 129, expires 5 years after the day it is
4 completed under the repealed Act.

5 **635 Public health-related EIS completed under repealed Act**

- 6 (1) This section applies if—
7 (a) a s 125-related EIS is completed under the repealed Act,
8 section 209A; and
9 (b) the EIS has not expired under the repealed Act, section 227A.
10 (2) The s 125-related EIS—
11 (a) is taken to be a public health EIS finalised under this Act,
12 section 127; and
13 (b) despite this Act, section 129, expires 5 years after the day it is
14 completed under the repealed Act.

15 **636 EIS processes commenced but not completed before**
16 **commencement day**

- 17 (1) This section applies if, before the commencement day—
18 (a) the proponent of a development proposal applied to the planning
19 and land authority under the repealed Act, section 212; and
20 (b) an EIS or s 125-related EIS has not been completed in relation
21 to the development proposal.
22 (2) The repealed Act, chapter 8 (other than division 8.2.1) continues to
23 apply in relation to the development proposal despite its repeal.

1 **Part 20.11** **Transitional—rent variations and**
2 **relief from provisions of leases**

3 **637** **Reduction of rent and relief from provisions of lease**
4 **approved before commencement day**

5 An approval under the repealed Act, section 269 (1) (Reduction of
6 rent and relief from provisions of lease) as in force immediately
7 before the commencement day is taken to be an approval under this
8 Act, section 312.

9 **638** **Reduction of rent and relief from provisions of lease**
10 **approved after commencement day**

- 11 (1) This section applies if, on or after the commencement day, the
12 territory planning authority gives an approval under section 312 (1).
- 13 (2) If the reduction or grant of relief includes a period before the approval
14 under section 312 (2)—that period may be for, or include, a period
15 before the commencement day.
- 16 (3) This section expires 12 months after the commencement day.

1 **Part 20.12** **Transitional—land management**
2 **agreements**

3 **639** **Land management agreements entered into before**
4 **commencement day**

5 A land management agreement under the repealed Act, section 283
6 as in force immediately before the commencement day is taken to be
7 a land management agreement entered into under this Act,
8 section 346.

Part 20.13 Transitional—land management plans

640 Land management plans

Each of the following instruments is taken to be a disallowable instrument made under this Act, section 391 (2):

- (a) *Land (Planning and Environment) (Plan of Management for Urban Open Space and Public Access Sportsgrounds in the Gungahlin Region) Approval 2007* (DI2007-298);
- (b) *Land (Planning and Environment) Plans of Management Approval 2000* (DI2000-143);
- (c) *Planning and Development (Albert Hall) Land Management Plan 2016* (DI2016-78);
- (d) *Planning and Development (Canberra Urban Lakes and Ponds) Land Management Plan 2022* (DI2022-10);
- (e) *Urban Services (Plans of Management) Approval 1998* (DI1998-242).

641 Draft land management plans

- (1) This section applies if, before the commencement day—
 - (a) a draft land management plan is prepared in accordance with the repealed Act, section 321; and
 - (b) a public consultation notice about the draft plan has not been notified under the repealed Act, section 323.
- (2) The draft land management plan is taken to have been prepared in accordance with this Act, section 385.

1 **Part 20.14** **Transitional—controlled**
2 **activities**

3 **642** **Controlled activities—construction without development**
4 **approval**

5 A reference in schedule 5 (Controlled activities), item 4, column 2 to
6 having a building or structure constructed without development
7 approval required by this Act includes a reference to having a
8 building or structure constructed without approval required by any of
9 the following:

- 10 (a) the *Planning and Development Act 2007* (repealed), chapter 7
11 (Development approvals) as in force at any time;
- 12 (b) the *Land (Planning and Environment) Act 1991* (repealed),
13 division 6.2 (Approvals) as in force at any time;
- 14 (c) the *Buildings (Design and Siting) Act 1964* (repealed) as in force
15 at any time.

- 1 **Part 20.15** **Transitional—review of decisions**
- 2 **643** **Applications for review not finally decided**
- 3 (1) This section applies if, before the commencement day—
- 4 (a) an application was made to the ACAT for review of a reviewable
- 5 decision (other than a decision in relation to a development
- 6 application) under the repealed Act; and
- 7 (b) the application has not been finally decided.
- 8 (2) The repealed Act continues to apply in relation to the application
- 9 despite its repeal.
- 10 (3) In this section:
- 11 *reviewable decision*—see the repealed Act, section 407.

Part 20.16 Transitional—administrative

644 Chief planning executive

- (1) This section applies to a person—
 - (a) appointed as the chief planning executive under the repealed Act, section 21; and
 - (b) who was the chief planning executive immediately before the commencement day.
- (2) The person is taken to be appointed as the chief planner under this Act, section 26 and the appointment continues in force until the end of the term of the appointment under the repealed Act unless ended earlier.
- (3) The *Planning and Development (Chief Planning Executive) Appointment 2021* (NI2021-170) is taken to be a notifiable instrument made under this Act, section 26 (4).

645 Acting chief planning executive

- (1) This section applies to a person—
 - (a) appointed as the acting chief planning executive under the repealed Act, section 21; and
 - (b) who was the acting chief planning executive immediately before the commencement day.
- (2) The person is taken to be appointed as the acting chief planner under this Act, section 26 and the appointment continues in force until the end of the term of the appointment under the repealed Act unless ended earlier.
- (3) The *Planning and Development (Acting Chief Planning Executive) Appointment 2022* (NI2022-190) is taken to be a notifiable instrument made under this Act, section 26 (4).

- 1 **646 Inspectors appointed before commencement day**
- 2 (1) This section applies to a public servant—
- 3 (a) appointed as an inspector under the repealed Act, section 387;
- 4 and
- 5 (b) who was an inspector immediately before the commencement
- 6 day.
- 7 (2) The public servant is taken to have been appointed as an inspector
- 8 under this Act, section 456 and the appointment continues in force
- 9 until the end of the term of the appointment under the repealed Act
- 10 unless ended earlier.
- 11 (3) The *Planning and Development (Inspectors) Appointment 2022*
- 12 (*No 1*) (NI2022-200) is taken to have been made under this Act,
- 13 section 456.

Part 20.17 Transitional—exempt development

647 Guidelines for essential work at affected residential premises

- (1) This section applies if a regulation (a *new regulation*) is made under this Act, section 143 (1) (b) substantially equivalent to the *Planning and Development Regulation 2008* (repealed), schedule 1, section 1.17A.
- (2) The guidelines in schedule 1 of the *Planning and Development (Essential Works at Affected Residential Premises) Guidelines 2020 (No 2)* (NI2020-476) are taken to be guidelines for the new regulation.
- (3) The *Planning and Development (Essential Works at Affected Residential Premises) Guidelines 2020 (No 2)* (NI2020-476) is taken to be a notifiable instrument made under the new regulation.

Chapter 21 Repeals

648 Legislation repealed

(1) The following legislation is repealed:

- *Planning and Development Act 2007* (A2007-24)
- *Planning and Development Regulation 2008* (SL2008-2)
- *Magistrates Court (Planning and Development Infringement Notices) Regulation 2008* (SL2008-11).

(2) All other statutory instruments, other than the following instruments, under the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008* are repealed:

- *Land (Planning and Environment) (Plan of Management for Urban Open Space and Public Access Sportsgrounds in the Gungahlin Region) Approval 2007* (DI2007-298)
- *Land (Planning and Environment) Plans of Management Approval 2000* (DI2000-143)
- *Planning and Development (Acting Chief Planning Executive) Appointment 2022* (NI2022-190)
- *Planning and Development (Albert Hall) Land Management Plan 2016* (DI2016-78)
- *Planning and Development (Canberra Urban Lakes and Ponds) Land Management Plan 2022* (DI2022-10)
- *Planning and Development (Chief Planning Executive) Appointment 2021* (NI2021-170)
- *Planning and Development (Essential Works at Affected Residential Premises) Guidelines 2020 (No 2)* (NI2020-476)
- *Planning and Development (Inspectors) Appointment 2022 (No 1)* (NI2022-200)
- *Planning and Development (Planning Strategy) Notice 2018* (NI2018-665)

- 1 • *Urban Services (Plans of Management) Approval 1998*
2 (DI1998-242).

3 *Note* The transitional provisions in this Act provide that certain statutory
4 instruments made under the *Planning and Development Act 2007* and the
5 *Planning and Development Regulation 2008* are taken to be made under
6 this Act (see s 603, s 640, pt 20.16 and s 647).

Schedule 1 Preserved leases

(see dict, def *preserved lease*)

Part 1.1 Preliminary

1.1 Meaning of *preserved lease use*—sch 1

In this schedule:

preserved lease use, in relation to land described in a preserved lease—

(a) means the use of the land for the purpose of any of the following:

(i) “an industry” or “industries”;

(ii) “light industrial and commercial businesses”;

(iii) conducting “industries” in buildings on the land; and

(b) includes the use of the land, or of a building or other structure on the land, for the retail sale of any of the following:

(i) goods (other than food-stuffs, non-alcoholic beverages or new clothing) that have been manufactured or processed on the land or in the building or other structure;

(ii) building materials, building equipment, building supplies or general hardware;

(iii) other goods ordinarily sold by sellers of goods mentioned in subparagraph (ii);

(iv) agricultural, garden or farm equipment or supplies;

(v) petrol, oil or other petroleum products;

(vi) motor vehicles, trailers, caravans, boats or machinery;

(vii) parts or accessories for goods mentioned in subparagraph (vi);

- 1 (viii) if the floor area of the building, or the part of the building
2 where the goods are sold or displayed for sale, does not
3 exceed 46.5m²—
- 4 (A) food-stuffs or non-alcoholic beverages of a kind
5 commonly known as confectionery or refreshments;
6 and
- 7 (B) any other kind of food-stuffs or non-alcoholic
8 beverages that have been manufactured or processed
9 on the land or in the building; and
- 10 (C) goods (other than food-stuffs, non-alcoholic
11 beverages, new clothing or goods mentioned in
12 paragraph (b) (i) to (vii)) that have been stored in bulk
13 in the building pending their sale and distribution to
14 people engaged in retail trade elsewhere than on that
15 land; but
- 16 (c) unless otherwise authorised by the lease (whether expressly or
17 by implication), does not include the use of the land, or of a
18 building or other structure on the land—
- 19 (i) for the retail sale of any other goods; or
- 20 (ii) as a boarding-house, guest-house, hostel, hotel or motel; or
- 21 (iii) as residential accommodation.

Part 1.2 Preserved leases

column 1 item	column 2 lease
1	a lease granted or continued, or purported to have been granted or continued, under the <i>City Area Leases Act 1936</i> (repealed)
2	a lease to which the <i>Planning and Development Act 2007</i> (repealed), s 456 (Transitional—status of leases and licences), as in force on 25 February 2010, applied
3	a lease in which provision is made for a preserved lease use of the land, or of a building or other structure on the land

Part 2.1 Preliminary

greenhouse gas emissions—see the *Climate Change and Greenhouse Gas Reduction Act 2010*, dictionary.

Part 2.2

Information and documents for certain development applications

column 1 item	column 2 type of development application	column 3 required information or documents
1	application for a development proposal requiring design review	the design review advice and the proponent's response to the design review advice
2	application for a development proposal in relation to which an environmental significance opinion has been given	the environmental significance opinion for the proposal
3	application for a development proposal in relation to which an EIS is required	the finalised EIS for the proposal
4	application made under s 155 (Applications in anticipation of major plan amendment)	the draft major plan amendment
5	application made under s 157 (Applications for development encroaching on adjoining land if development prohibited)	the declaration under s 156 (4) and the proposed technical amendment
6	application for a development proposal in relation to which a guideline requires survey information	the information required by the guideline
7	application for development to which s 212 (Development applications for development undertaken without approval) applies	a plan of the development prepared by a registered surveyor that sets out the dimensions of the development
8	application for the subdivision of a units plan under the <i>Unit Titles Act 2001</i> , s 165B (Subdivision of units plan—application)	the resolution of the owners corporation under the <i>Unit Titles Act 2001</i> , s 160 (3) to cancel the units plan

column 1 item	column 2 type of development application	column 3 required information or documents
9	application to which s 305 (Development application to remove concessional status of lease) applies	an assessment of the social, cultural and economic impacts of the proposed variation and a statement about any other proposed development (including any further proposed lease variation and design and siting elements)
10	application for approval of a non-standard chargeable variation of a nominal rent lease	a valuation by an accredited valuer that works out the amounts represented by V_1 and V_2 in s 328
11	application for a proposed development if the annual amount of the expected greenhouse gas emissions from operating the proposed development is more than the amount prescribed by regulation	an expected greenhouse gas emissions statement for the development
12	application for a proposed development in relation to which a development agreement applies	written endorsement from the Territory or a government entity that the proposal is consistent with the lessee's obligations under the agreement

**Schedule 3 Market value leases and leases
that are possibly concessional**

(see s 255, def *market value lease*, par (b) and s 256 (1) (c))

Part 3.1 Preliminary

3.1 Definitions—sch 3

In this schedule:

incorporated association means an association incorporated under the [Associations Incorporation Act 1991](#) or a law of another jurisdiction corresponding, or substantially corresponding, to that Act.

rental lease—see section 252.

residential lease—see section 252.

rural lease—see section 252.

Part 3.2 Market value leases

column 1 item	column 2 lease
1	a consolidated or subdivided lease or a further or regranted lease, other than a lease mentioned in s 254 (1)
2	a rural lease
3	a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the housing commissioner under the Housing Assistance Act 2007
4	a lease granted to the Territory or a territory entity
5	a residential lease
6	<p>a rental lease granted for commercial purposes after 1 January 1974 if the rent was paid out—</p> <ul style="list-style-type: none">(a) in accordance with a law in force in the Territory; or(b) by agreement between the Commonwealth or the Territory and the lessee <p>Examples—commercial purposes</p> <ul style="list-style-type: none">1 industrial2 business
7	<p>a lease (the <i>individual lease</i>) granted for no consideration if—</p> <ul style="list-style-type: none">(a) the individual lease is granted following the subdivision of a lease (the <i>head lease</i>) held by the person to whom the individual lease is granted; and(b) the person has provided infrastructure on the land leased under the head lease
8	<p>a lease granted under the City Area Leases Act 1936—</p> <ul style="list-style-type: none">(a) before 1 January 1971; and(b) to which that Act, s 18 (Rent) applies; and(c) that does not state, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease

Schedule 3
Part 3.2

Market value leases and leases that are possibly concessional
Market value leases

column 1 item	column 2 lease
9	a lease that includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease
10	a lease granted to an entity, other than the Territory or a territory entity, if— <ul style="list-style-type: none"> (a) the lease states that the lease commenced, or is taken to have commenced, on a day (the <i>lease commencement day</i>) earlier than the day the lease was granted; and (b) the land described in the lease was occupied by the Territory or a territory entity on the lease commencement day
11	a lease granted to the Commonwealth or a Commonwealth entity
12	a lease granted to an entity, other than the Commonwealth or a Commonwealth entity, if— <ul style="list-style-type: none"> (a) the lease states that the lease commenced, or is taken to have commenced, on a day (the <i>lease commencement day</i>) earlier than the day the lease was granted; and (b) the land described in the lease was occupied by the Commonwealth or a Commonwealth entity on the lease commencement day
13	a lease granted under the <i>City Area Leases Act 1936</i> if, on 1 July 2009— <ul style="list-style-type: none"> (a) the lessee of the lease is the holder of a club licence under the <i>Liquor Act 1975</i>; and (b) at least 75% of the area of the land comprising the lease is located in 1 or both of the following: <ul style="list-style-type: none"> (i) a commercial zone under the territory plan; (ii) a designated area under the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cwlth); and <p>Example</p> <p>30% of land described in a lease is located in a commercial zone and 50% of land is located in a designated area</p> <ul style="list-style-type: none"> (c) the lease does not state that there is a restriction on dealing with the lease; and (d) the lease authorises the land described in the lease to be used for both— <ul style="list-style-type: none"> (i) a licensed club under the <i>Liquor Act 1975</i>; and

column 1 item	column 2 lease
	<p>(ii) a commercial purpose unrelated to the club</p> <p>Examples—commercial purpose</p> <p>1 a shop under the territory plan</p> <p>2 a non-retail commercial use under the territory plan</p> <p>3 a commercial accommodation use under the territory plan</p>
14	a lease granted to the Australian National University established under the Australian National University Act 1991 (Cwlth)
15	a lease granted to the University of NSW
16	a lease granted under the Land (Planning and Environment) Act 1991 (repealed), s 164 (Special leases)
17	a lease granted under the City Area Leases Act 1936 for commercial purposes
18	<p>a lease granted after 30 March 2008 other than a lease—</p> <p>(a) that states, in the lease or a memorial to the lease, that the lease is a concessional lease; or</p> <p>(b) that satisfies the requirements under section 256 (1)</p> <p><i>Note</i> Certain leases granted after 30 March 2008 under the Land (Planning and Environment) Act 1991 (repealed) are possibly concessional (see s 256).</p>
19	<p>a lease granted before 31 March 2008 if—</p> <p>(a) the lease was granted for a consideration less than the full market value of the lease, or for no consideration; but</p> <p>(b) 1 of the following payments was made to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease:</p> <p>(i) an amount in relation to the grant of the lease that was equal to the lease's market value at the time of payment or, if the amount was paid in parts, at the time of the last payment;</p> <p>(ii) an amount to reduce the rent payable under the lease to a nominal rent under the Land (Planning and Environment) Act 1991 (repealed), s 186 (Variation of lease to pay out rent)</p>

Schedule 3
Part 3.3

Market value leases and leases that are possibly concessional
Possibly concessional leases

column 1 item	column 2 lease
20	a lease granted before 1 July 2007 if— <ul style="list-style-type: none">(a) the lessee applied in writing to the territory planning authority or the Minister to remove the concessional status of the lease; and(b) the territory planning authority or the Minister—<ul style="list-style-type: none">(i) approved the application in writing before 31 March 2008, subject to payment of an amount (the <i>application amount</i>), decided by the territory planning authority or the Minister, equal to the lease's market value; and(ii) decided the application amount in writing, after 1 July 2007 and before 31 March 2008; and(c) the lessee did not pay the application amount before 31 March 2008; and(d) the lessee pays the application amount within 6 months after the commencement of this schedule
21	a lease prescribed by regulation

Part 3.3 Possibly concessional leases

Note A lease is not possibly concessional if the lease states that the lease is concessional or the lease is mentioned in pt 3.2 (see s 256).

column 1 item	column 2 lease
1	a lease granted to a property trust or other corporation established by or in relation to a religious organisation that may hold property in accordance with an Act
2	a lease granted under the <i>Leases (Special Purposes) Act 1925</i>
3	a lease that states, in the lease or a memorial to the lease, that the <i>Land (Planning and Environment) Act 1991</i> (repealed), s 167 applies to the lease
4	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease
5	a lease that was granted under the <i>Leases Act 1918</i>

column 1 item	column 2 lease
6	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a requirement that 1 or more stated uses of the land may only be exercised by the lessee
7	a lease granted to an incorporated association if— <ul style="list-style-type: none"> (a) the incorporated association is still the lessee; and (b) the lease states that the lease is subject to a requirement that the incorporated association occupy a minimum area of land
8	a lease— <ul style="list-style-type: none"> (a) granted to a club, whether or not the club is still the lessee; or (b) that authorises the land described in the lease to be used for a club
9	a lease granted to a community organisation that states that the lease was granted under the <i>Land (Planning and Environment) Act 1991</i> (repealed), s 163, whether or not the community organisation is still the lessee
10	a lease granted to an incorporated association or community organisation over a unit in a units plan under the <i>Unit Titles Act 2001</i> if— <ul style="list-style-type: none"> (a) the lease (the <i>original lease</i>) that ended on registration of the units plan was granted to the incorporated association or community organisation; and (b) the incorporated association or community organisation occupies the unit— <ul style="list-style-type: none"> (i) for its own purposes; and (ii) in accordance with a condition in the original lease <p><i>Note</i> On registration of a units plan, the lease of the parcel of land over which the units plan is registered ends (see <i>Unit Titles Act 2001</i>, s 33).</p>
11	a lease, other than a rural lease, granted for a term less than 99 years

1 **Schedule 4 Management objectives for**
2 **public land**

3 (see s 383 (1) (a))

4 **Part 4.1 Preliminary**

5 **4.1 Definitions—sch 4**

6 In this schedule:

7 *Aboriginal object*—see the *Heritage Act 2004*, section 9 (1).

8 *Aboriginal place*—see the *Heritage Act 2004*, section 9 (1).

9 *natural environment* means all biological, physical and visual
10 elements of the earth and its atmosphere, whether natural or modified.

Part 4.2

Management objectives for areas of public land

column 1 item	column 2 reserve purpose	column 3 management objectives
1	wilderness area	<ul style="list-style-type: none">(a) to conserve the natural environment in a manner ensuring that disturbance to that environment is minimal(b) 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	<ul style="list-style-type: none">(a) to conserve the natural environment(b) to provide for public use of the area for recreation, education and research
3	nature reserve	<ul style="list-style-type: none">(a) to conserve the natural environment(b) to provide for public use of the area for recreation, education and research
4	special purpose reserve	to provide for public and community use of the area for recreation and education
5	urban open space	<ul style="list-style-type: none">(a) to provide for public and community use of the area(b) to develop the area for public and community use
6	cemetery or burial ground	to provide for the interment or cremation of human remains and the interment of the ashes of human remains

Schedule 4
Part 4.2

Management objectives for public land
Management objectives for areas of public land

column 1 item	column 2 reserve purpose	column 3 management objectives
7	protection of water supply	<ul style="list-style-type: none">(a) to protect existing and future domestic water supply(b) to conserve the natural environment(c) to provide for public use of the area for education, research and low-impact recreation
8	lake	<ul style="list-style-type: none">(a) to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs(b) to prevent and control pollution of waterways(c) to provide for public use of the lake for recreation(d) to provide a habitat for fauna and flora
9	sport and recreation reserve	to provide for public and community use of the area for sport and recreation
10	heritage area	<ul style="list-style-type: none">(a) to conserve natural and cultural heritage places and objects, including Aboriginal places and objects(b) to provide for public use of the area for recreation, education and research as appropriate, and having proper regard to natural and cultural values

Schedule 5 Controlled activities

(see s 408 and s 428)

column 1 item	column 2 controlled activities	column 3 penalty
1	<p>failing to comply with—</p> <p>(a) a provision of a lease, other than—</p> <p>(i) a building and development provision requiring works to be commenced within a stated time; or</p> <p>(ii) a building and development provision requiring works to be completed within a stated time if—</p> <p>(A) a new compliance time is notified under s 371; and</p> <p>(B) the noncompliance fee has been paid; and</p> <p>(C) the new compliance time has not ended; or</p> <p>(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</p>	60 penalty units
2	<p>failing to keep a leasehold clean</p> <p><i>Note</i> Failure to keep a leasehold clean may also be an amenity impact under the Litter Act 2004.</p>	60 penalty units
3	<p>undertaking a development for which development approval is required—</p> <p>(a) without development approval; or</p> <p>(b) other than in accordance with the development approval</p>	60 penalty units
4	<p>having a building or other structure constructed without development approval required by this Act</p>	60 penalty units

column 1 item	column 2 controlled activities	column 3 penalty
5	failing to take reasonable steps to implement an offset management plan as required under s 246	60 penalty units
6	using unleased land in a way that is not authorised by— (a) a licence under this Act; or (b) a sign approval or work approval under the <i>Public Unleased Land Act 2013</i> ; or (c) a public unleased land permit under the <i>Public Unleased Land Act 2013</i>	60 penalty units
7	managing land held under a rural lease other than in accordance with— (a) if an offset management plan is in force for the land— (i) the offset management plan; and (ii) to the extent that the land management agreement for the land is not inconsistent with the offset management plan—the land management agreement; or (b) in any other case—the land management agreement for the land	60 penalty units
8	failing to enter into a land management agreement as required under s 349	60 penalty units
9	undertaking prohibited development, other than in accordance with a development approval allowed under div 7.3.1	60 penalty units
10	failing to use land for a continuous period of at least 1 year for the purpose for which the lease over the land is granted	60 penalty units

1 **Schedule 6** **Reviewable decisions, eligible**
2 **entities and interested entities**

3 (see s 500)

4 **Part 6.1** **Preliminary**

5 **6.1** **Meaning of *material detriment*—sch 6**

6 In this schedule:

7 ***material detriment***—

8 (a) means detriment suffered by an entity because of a decision if—

9 (i) the decision has, or is likely to have, an adverse impact on
10 the entity's use or enjoyment of land; or

11 (ii) for an entity that has objects or purposes—the decision
12 relates to a matter included in the entity's objects or
13 purposes; but

14 (b) does not include detriment suffered by an entity only because of
15 a decision that increases, or is likely to increase, direct or
16 indirect competition with the entity's business, business partner,
17 close friend or family member.

Schedule 6
Part 6.2

Reviewable decisions, eligible entities and interested entities
Reviewable decisions, eligible entities and interested entities

Part 6.2 Reviewable decisions, eligible entities and interested entities

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
1	decision under s 182 to approve (with or without conditions) or refuse a development application	applicant for development approval	entity that made representation under s 177 about the application

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
2	decision under s 182 to approve (with or without conditions) a development application, unless the development application is exempted from a public notification requirement by regulation under s 173 (3) (b)	an entity if— (a) the entity made a representation under s 177 about the application or had a reasonable excuse for not making a representation; and (b) the approval of the application may cause the entity to suffer material detriment	applicant for development approval
3	decision of entity mentioned in s 184 (2) (a) that is required to be satisfied in relation to undertaking development or stage of development	approval-holder	territory planning authority

Schedule 6 Reviewable decisions, eligible entities and interested entities
Part 6.2 Reviewable decisions, eligible entities and interested entities

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
4	decision to refuse to endorse a plan, drawing, specification or other document mentioned s 184 (2) (o), or decision under s 184 (4) to refuse to endorse a change to an endorsed plan, drawing, specification or other document	approval-holder	entity that made representation under s 177 about the application for development approval
5	decision under s 196 (1) (b) on reconsideration	applicant for reconsideration	entity that made representation under s 177 about the original application

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
6	decision under s 196 (1) (b) to approve (with or without conditions) a development application on reconsideration, unless the development application to which the reconsideration relates is exempted from a public notification requirement by regulation under s 173 (3) (b)	an entity if— (a) the entity made a representation under s 177 about the original application or had a reasonable excuse for not making a representation; and (b) the approval of the original application may cause the entity to suffer material detriment	applicant for reconsideration
7	decision under s 203 to refuse to amend a development approval	approval-holder	entity that made representation under s 177 about the original application

Schedule 6
Part 6.2

Reviewable decisions, eligible entities and interested entities
Reviewable decisions, eligible entities and interested entities

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
8	decision under s 203 to amend (with or without conditions) a development approval, unless the development application to which the approval relates is exempted from a public notification requirement by regulation under s 173 (3) (b)	an entity if— (a) the entity made a representation under s 177 about the original application or had a reasonable excuse for not making a representation; and (b) the amendment of the approval may cause the entity to suffer material detriment	approval-holder
9	decision under s 201 to revoke development approval	holder of revoked approval	entity that made representation under s 177 about the application for development approval

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
10	decision under s 259 to refuse to grant a lease to a person by direct sale (other than a refusal to grant a lease to the University of NSW of land mentioned in s 270 (2) (g))	applicant for grant of lease	
11	decision under s 269 (2) to end person's right to be granted a lease	person whose right is ended	
12	decision under s 277 to refuse to approve a transfer, assignment or parting of possession of lease	lessee	
13	decision under s 280 (2) to refuse to approve a sublease of land	applicant for approval of sublease	
14	decision under s 285 to refuse to grant a further lease	applicant for grant of further lease	
15	decision under s 295 that lease is a concessional lease	lessee	

Schedule 6
Part 6.2

Reviewable decisions, eligible entities and interested entities
Reviewable decisions, eligible entities and interested entities

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
16	decision under s 297 that lease is a concessional lease	lessee	
17	decision under s 303 to refuse to approve a dealing with a concessional lease	lessee	
18	decision under s 307 about the payout amount for a concessional lease	lessee	
19	decision under s 311 to confirm variation of rent after review	lessee	
20	decision under s 311 to set aside variation and substitute another variation of rent after review	lessee	
21	decision under s 314 adjusting rent after reassessment	lessee	
22	decision under s 317 (2) (d) about amount payable for variation to reduce rent payable under lease to a nominal rent	lessee	

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
23	decision under s 333 (1) (b) (i) on reconsideration about amount of lease variation charge for variation of lease	applicant for the reconsideration	
24	decision under s 333 (1) (b) (ii) to confirm original decision on reconsideration about amount of lease variation charge for variation of lease	applicant for the reconsideration	
25	decision under s 339 not to approve an application to defer payment of a lease variation charge	applicant for the deferral	
26	decision under s 358 about market value of improvements on land	lessee	
27	decision under s 359 (2) to refuse to accept the surrender of a lease, or part of land described in lease	person surrendering lease or part of land described in lease	

Schedule 6
Part 6.2

Reviewable decisions, eligible entities and interested entities
Reviewable decisions, eligible entities and interested entities

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
28	decision under s 359 (2) to accept the surrender of a lease, or part of land described in lease, subject to a condition	person surrendering lease or part of land described in lease	
29	decision under s 360 to refuse to authorise payment of prescribed amount for surrendered or terminated lease	person surrendering lease or whose lease is terminated	
30	decision under s 364 (1) to refuse to issue a certificate of compliance	lessee	
31	decision under s 364 (2) to issue certificate of compliance stating that building and development provision has been partly complied with	lessee	
32	decision under s 364 (2) to issue a certificate of compliance subject to condition that lessee provide security	lessee	

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
33	decision under s 364 (2) to refuse to issue a certificate of compliance	lessee	
34	decision under s 367 or s 368 to refuse to approve the assignment or transfer of a lease or interest in a lease	lessee	
35	decision under s 371 (1) to set a new compliance time	lessee	
36	decision under s 421 (5) to refuse to extend the time allowed to respond to show cause notice	applicant for extension	
37	decision under s 423 to make a controlled activity order	person against whom order directed lessee of land to which order relates occupier of land to which order relates	

Schedule 6
Part 6.2

Reviewable decisions, eligible entities and interested entities
Reviewable decisions, eligible entities and interested entities

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
38	decision under s 430 (4) to refuse to revoke a controlled activity order	applicant for revocation lessee of land to which order relates occupier of land to which order relates	
39	decision under s 448 (3) to give a prohibition notice	person against whom notice directed lessee of land to which notice relates occupier of land to which notice relates	
40	decision under s 451 (3) to refuse to revoke a prohibition notice	applicant for revocation lessee of land to which notice relates occupier of land to which notice relates	

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
41	decision under s 453 to terminate a lease	person whose lease is terminated	
42	decision under s 454 to terminate a licence	person whose licence is terminated	
43	decision under s 455 (2) not to extend the time to respond to a notice of termination	person whose lease or licence is terminated	

Schedule 7 Matters exempt from third party ACAT review

(see s 500, def *eligible entity*, par (c))

Part 7.1 Preliminary

7.1 Definitions—sch 7

In this schedule:

Belconnen town centre means the area outlined in bold on the plan in this schedule, division 7.3.2.

city centre means the area outlined in bold on the plan in this schedule, division 7.3.1.

Gungahlin town centre means the area outlined in bold on the plan in this schedule, division 7.3.3.

Kingston Foreshore means the area outlined in bold on the plan in this schedule, division 7.3.6.

town centre means the Belconnen town centre, the Gungahlin town centre, the Tuggeranong town centre or the Woden town centre.

Tuggeranong town centre means the area outlined in bold on the plan in this schedule, division 7.3.4.

University of Canberra site means the area outlined in bold on the plan in this schedule, division 7.3.7.

Woden town centre means the area outlined in bold on the plan in this schedule, division 7.3.5.

Part 7.2

Matters exempt from third party ACAT review

column 1 item	column 2 matters
1	a territory priority project
2	a development, other than a significant development requiring an EIS or a subdivision design application, on land in— <ul style="list-style-type: none">(a) the city centre; or(b) a town centre; or(c) an industrial zone; or(d) the Kingston Foreshore; or(e) the University of Canberra site
3	a development, other than a significant development requiring an EIS or a subdivision design application, on land in a non-residential zone if— <ul style="list-style-type: none">(a) the land is at least 50m from any block within a residential zone; and(b) for a development involving the building or altering of a building or other structure on the land—the new or altered building or other structure meets the quantitative requirements for any applicable height and plot ratio provisions; and(c) for a development on land the subject of a lease or sublease which at the time of the application permits a community use—the decision does not authorise a lease variation to remove a community use; and(d) for land within a CZ4 (local centre) zone and the subject of a lease or sublease which at the time of the application permits the use of the land for a shop—<ul style="list-style-type: none">(i) the decision does not authorise a lease variation to remove the use of the land for a shop; and(ii) the development would not have the effect of permitting the building of a dwelling on the land; and(e) for land in a non-urban zone—the development would not have the effect of permitting the use of the land for a purpose other than that for which it is leased, or permitted by a licence under this Act, at the time of the application

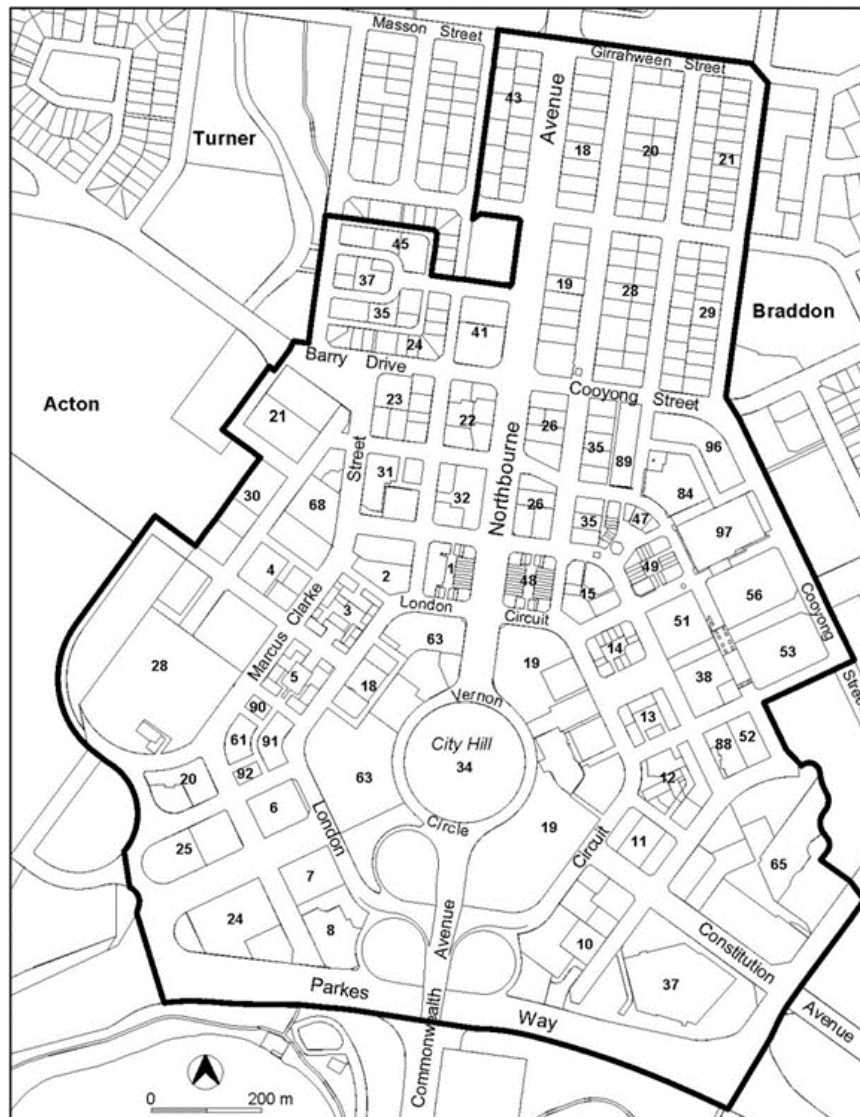
Schedule 7
Part 7.2

Matters exempt from third party ACAT review
Matters exempt from third party ACAT review

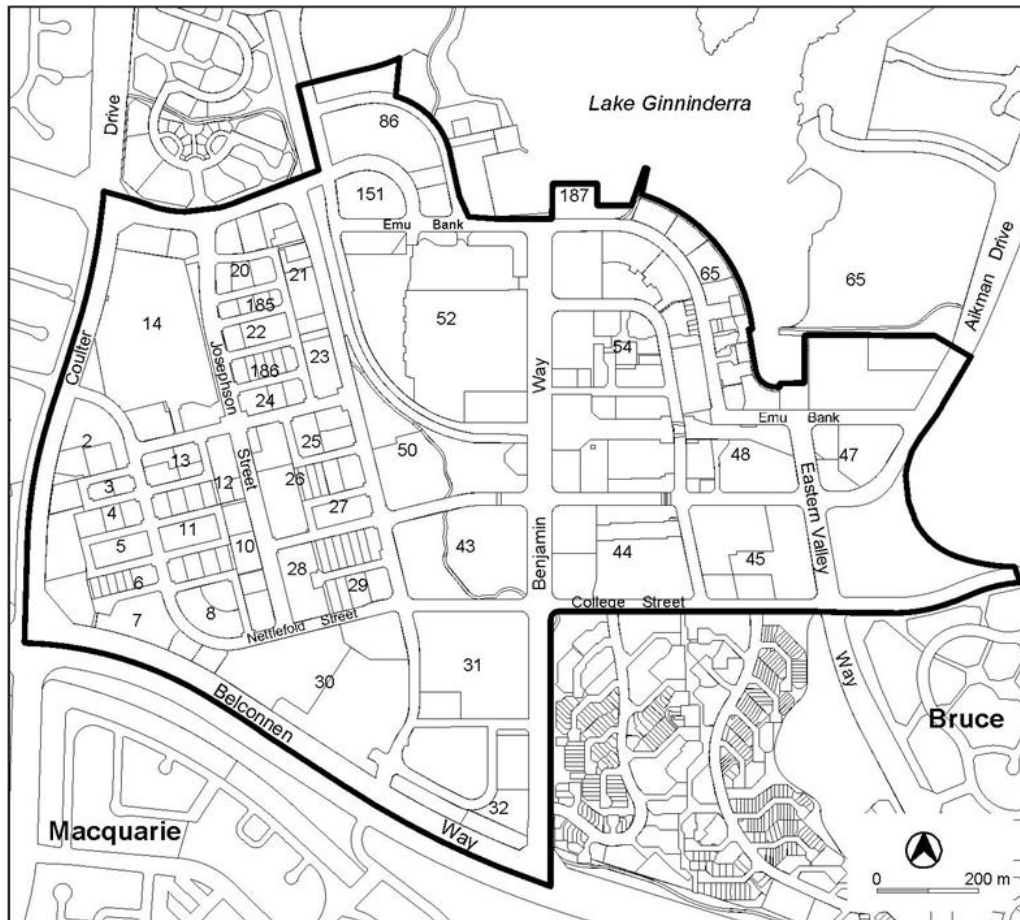
column 1 item	column 2 matters
4	the demolition of a building or other structure in connection with a development, other than a significant development requiring an EIS or a subdivision design application, consisting of the building or alteration of a building or other structure to which this part applies
5	public works, other than a significant development requiring an EIS or a subdivision design application, consisting of the building, alteration or demolition of— <ul style="list-style-type: none">(a) electricity, water, gas or communication services; or(b) a floodway or sewerage or drainage works; or(c) a public road, public path, cycleway or car park
6	the building, alteration or demolition of public facilities on unleased land, or land leased to the Territory, including barbecues, seating and playground equipment, or related landscaping
7	the putting up, attaching or displaying of a sign or advertisement on land or to a building or other structure on land
8	a subdivision design application in a future urban area

Part 7.3 Maps

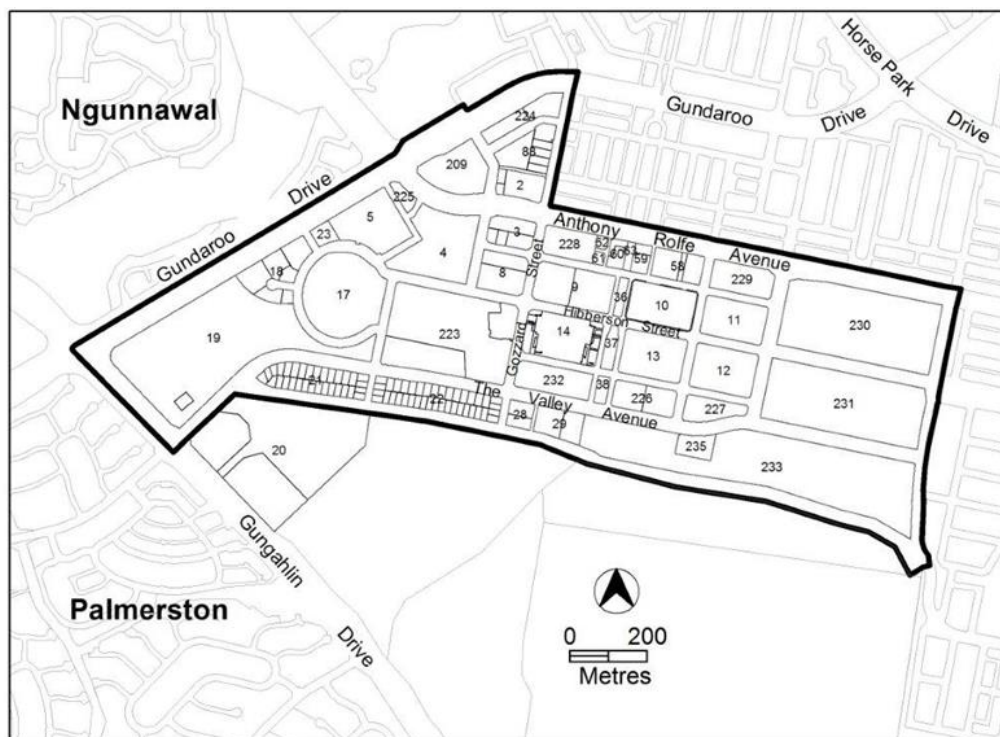
Division 7.3.1 City centre



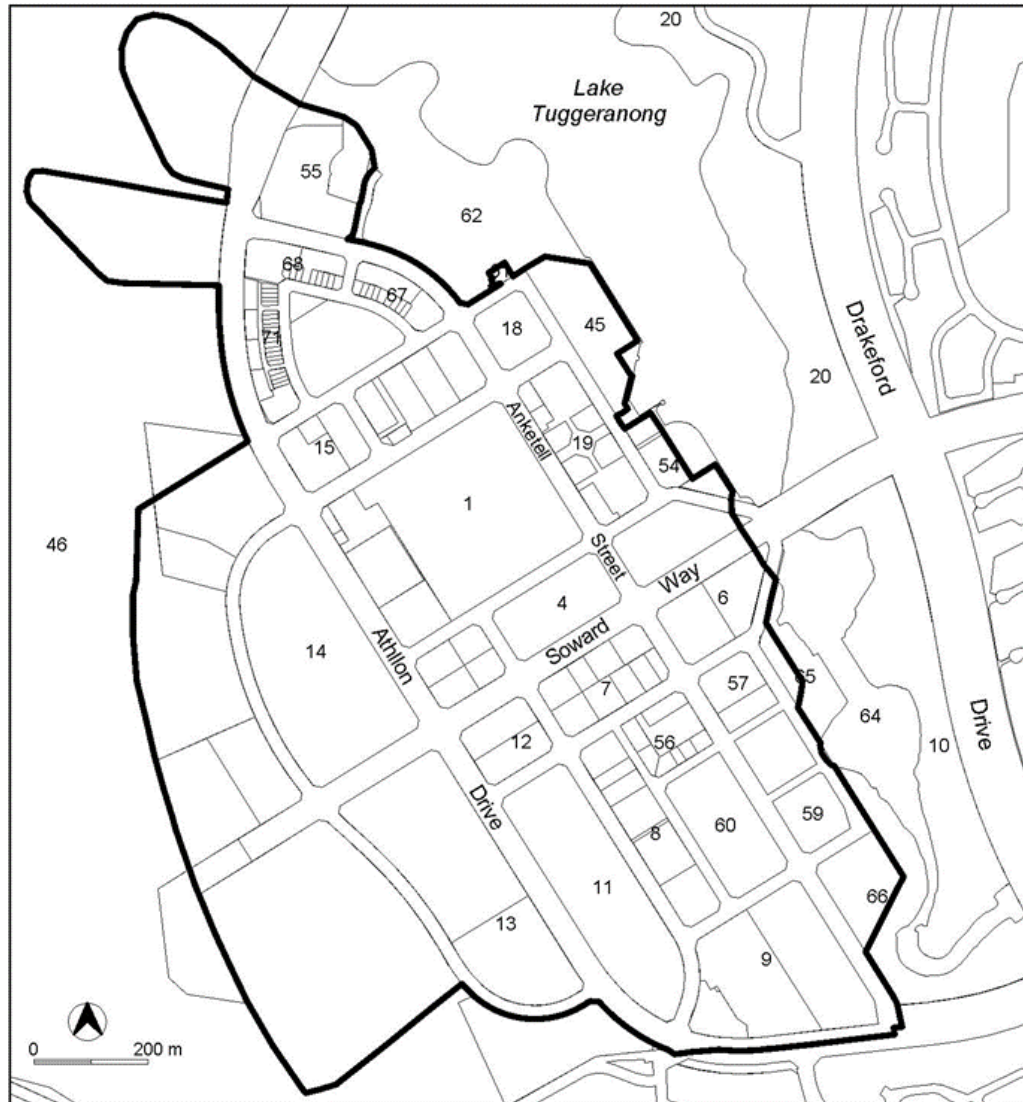
Division 7.3.2 Belconnen town centre



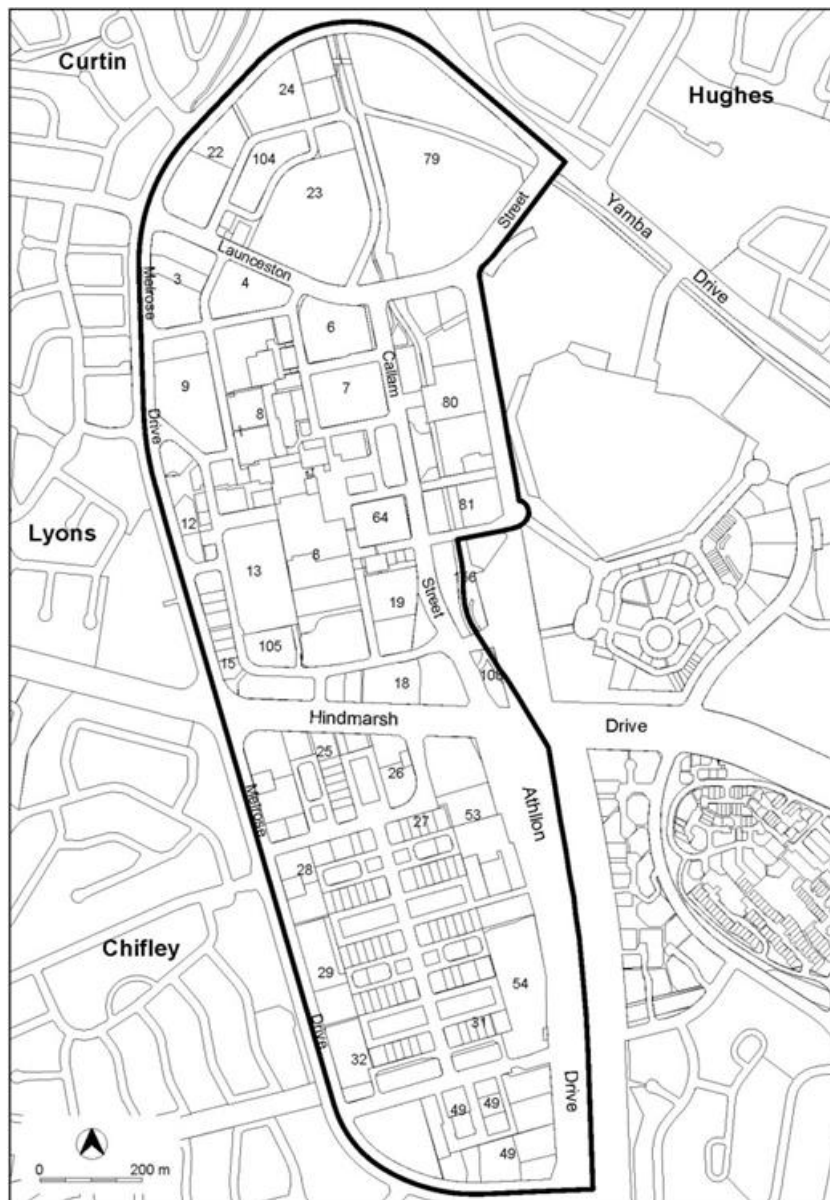
Division 7.3.3 Gungahlin town centre



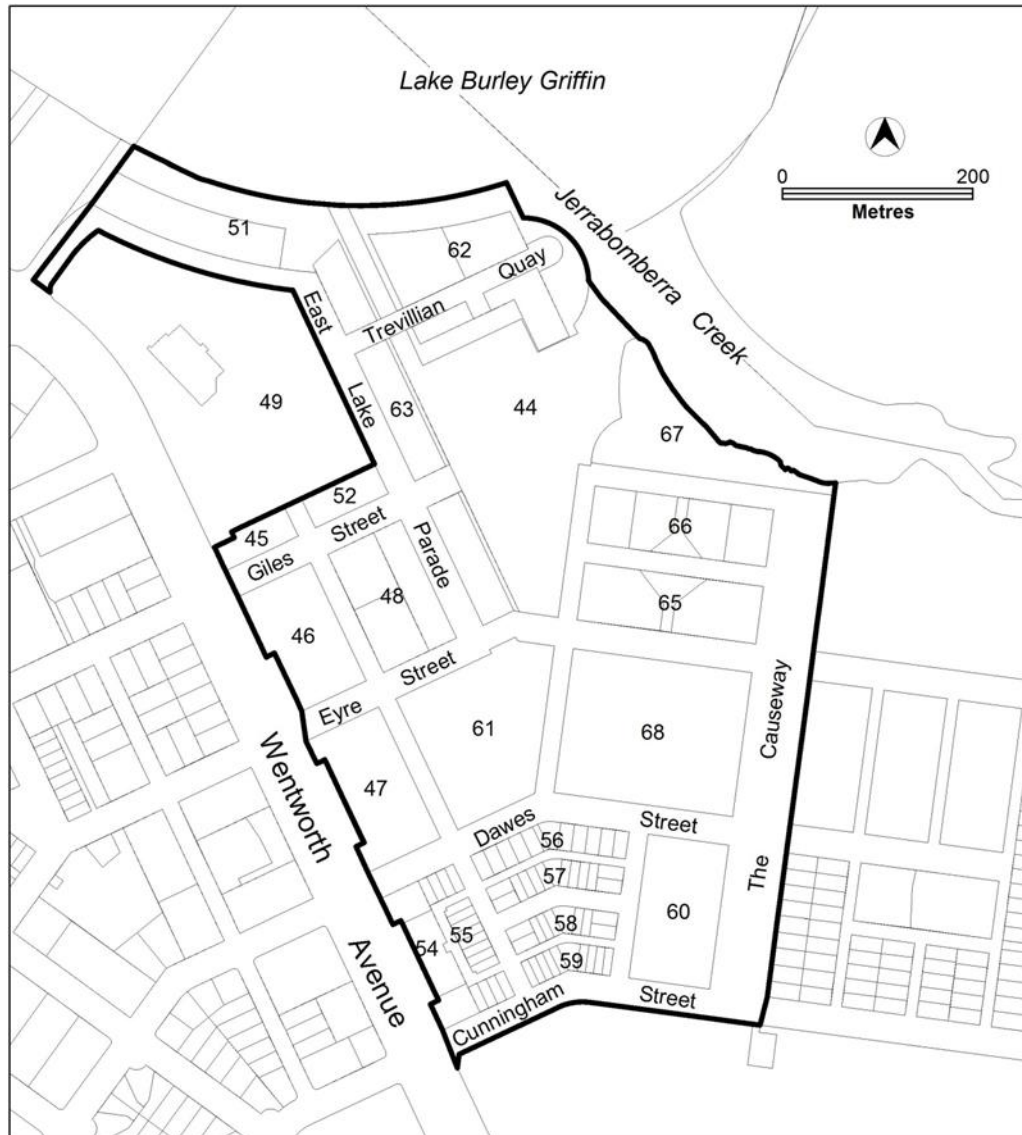
Division 7.3.4 Tuggeranong town centre



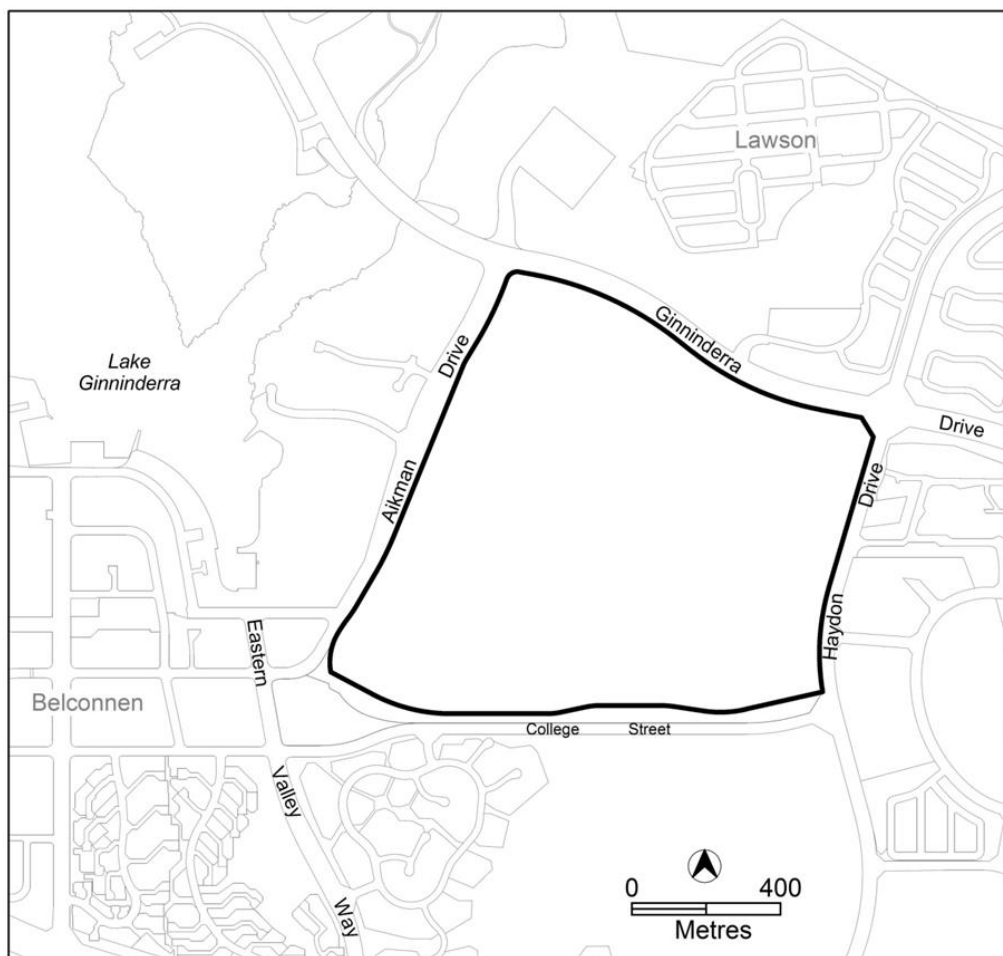
Division 7.3.5 Woden town centre



Division 7.3.6 Kingston Foreshore



Division 7.3.7 University of Canberra site



Dictionary

(see s 3)

Note The [Legislation Act](#) contains definitions relevant to this Act.
For example:

- ACAT
- appoint
- city renewal authority
- commissioner for revenue
- conservator of flora and fauna
- contravene
- corporation
- document
- emergency service
- emergency services commissioner
- entity
- environment protection authority
- Executive
- exercise
- found guilty
- function
- head of service
- heritage council
- home address
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- national capital authority
- national capital plan
- person (see s 160)
- public servant
- registered surveyor
- registrar-general
- reviewable decision notice

- Self-Government Act
- suburban land agency
- territory authority
- territory instrumentality
- territory land
- territory-owned corporation
- the Territory
- under
- work health and safety commissioner
- working day.

Aboriginal object, for schedule 4 (Management objectives for public land)—see the [Heritage Act 2004](#), section 9 (1).

Aboriginal place, for schedule 4 (Management objectives for public land)—see the [Heritage Act 2004](#), section 9 (1).

accredited valuer means a valuer accredited by—

- (a) the Australian Property Institute Limited ACN 608 309 128; or
- (b) if another entity is prescribed by regulation—that entity.

act includes omission.

activation and liveability principles—see section 10 (2).

additional rent means amounts payable under a lease in addition to rent owed under the lease because rent or other amounts owing under the lease have not been paid as required.

adjoins, for division 7.5.4 (Public notification of development applications)—see section 172.

applicant, for a development application, includes a lessee who signs the development application.

approval-holder means a person whose application for development approval has been approved (with or without a condition) if the approval is in force.

- 1 ***assessable development*** means development that requires
 2 development approval.
- 3 ***associated document***, for part 14.1 (Public register)—see
 4 section 497.
- 5 ***authorised person***—see section 435 (1).
- 6 ***authorised use***, of land, or of a building or other structure on land,
 7 for part 7.2 (Exempt development)—see section 144.
- 8 ***authority website***—see section 505.
- 9 ***background papers***, in relation to a draft major plan amendment or
 10 major plan amendment, for part 5.2 (Territory plan—major plan
 11 amendments)—see section 53.
- 12 ***Belconnen town centre***, for schedule 7 (Matters exempt from third
 13 party ACAT review)—see schedule 7, section 7.1.
- 14 ***building and development provision***, for chapter 10 (Leases and
 15 licences)—see section 252.
- 16 ***business hours***, in relation to premises—
- 17 (a) means 9.00 am to 5.00 pm on a working day; and
- 18 (b) if the premises are not residential premises—includes any period
 19 the premises are open for business outside the period mentioned
 20 in paragraph (a).
- 21 ***certificate of compliance*** means a certificate issued under
 22 section 364.
- 23 ***certificate of occupancy*** means a certificate issued under the [Building](#)
 24 [Act 2004](#), section 69.
- 25 ***chargeable variation***, of a nominal rent lease, for division 10.7.3
 26 (Variation of nominal rent leases)—see section 323.
- 27 ***chief planner*** means the Chief Planner appointed under section 26.
- 28 ***city centre***, for schedule 7 (Matters exempt from third party ACAT
 29 review)—see schedule 7, section 7.1.

Commonwealth entity means—

- (a) a body established under a Commonwealth Act; or
- (b) a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (Cwlth); or
- (c) a Commonwealth company under the *Public Governance, Performance and Accountability Act 2013* (Cwlth); or
- (d) a company in which a controlling interest is held by either or both of the following:
 - (i) the Commonwealth;
 - (ii) a Commonwealth company under the *Public Governance, Performance and Accountability Act 2013* (Cwlth).

community lease—see section 287 (1).

community lease provisions, for a community lease—see section 288.

community lease use—see section 287 (1).

community organisation means a corporation that—

- (a) has, as its principal purpose, the provision of a service, or a form of assistance, to people living or working in the ACT; and
- (b) is not carried on for the financial benefit of its members; and
- (c) does not hold a club licence under the *Liquor Act 2010*.

community use report means a report prepared under section 292.

complainant, for part 12.2 (Complaints about controlled activities) and part 12.3 (Controlled activity orders)—see section 410 (1) (b).

concessional lease—see section 254 (1).

concessional status removed—see section 254 (2).

- 1 ***concurrent development application*** means a development
 2 application for prohibited development made under—
- 3 (a) section 155 (Applications in anticipation of major plan
 4 amendment); or
- 5 (b) section 157 (Applications for development encroaching on
 6 adjoining land if development prohibited).
- 7 ***conditional environmental significance opinion***—see
 8 section 138 (4) (b).
- 9 ***connected***, for chapter 13 (Enforcement)—see section 456.
- 10 ***consolidation***, for chapter 10 (Leases and licences)—see section 252.
- 11 ***consultation comments***—
- 12 (a) for part 5.2 (Territory plan—major plan amendments)—see
 13 section 61 (1) (c) (i); and
- 14 (b) in relation to a minor plan amendment—see
 15 section 84 (2) (b) (i).
- 16 ***consultation notice***—
- 17 (a) for part 5.2 (Territory plan—major plan amendments)—see
 18 section 61 (1) (c); and
- 19 (b) for a draft revised offsets policy—see section 225 (1); and
- 20 (c) for draft offsets policy guidelines—see section 232 (1); and
- 21 (d) for a draft land management plan—see section 386 (1).
- 22 ***consultation period***—
- 23 (a) for part 5.2 (Territory plan—major plan amendments)—see
 24 section 53; and
- 25 (b) for a draft revised offsets policy—see section 225 (2) (b); and
- 26 (c) for draft offsets policy guidelines—see section 232 (2) (b); and
- 27 (d) for a draft land management plan—see section 386 (2) (b).

1 ***controlled activity***—see section 408.

2 ***controlled activity order***—see section 420.

3 ***corresponding major plan amendment***, for a draft major plan
4 amendment, for part 5.2 (Territory plan—major plan amendments)—
5 see section 53.

6 ***cultural heritage conservation principles***—see section 10 (2).

7 ***custodian***, in relation to land, means an administrative unit or other
8 entity with administrative responsibility for land in the ACT that is
9 unleased land, public land or both.

10 ***deal***, with a lease, means—

11 (a) assign or transfer the lease; or

12 (b) sublet the land described in the lease or part of it; or

13 (c) part with possession of the land described in the lease or any part
14 of it.

15 ***deciding a development application*** means approving (with or
16 without a condition) or refusing the application.

17 ***decision-maker***—

18 (a) for chapter 7 (Development assessment and approvals)—see
19 section 142; and

20 (b) for part 9.4 (Offset conditions)—see section 239; and

21 (c) for chapter 15 (Notification and review of decisions)—see
22 section 500.

23 ***declared land sublease***—see section 361 (1).

24 ***declared protected matter***—see section 217 (2).

25 ***declared site***—see the [Tree Protection Act 2005](#), dictionary.

26 ***deferral arrangement***, for a lease variation charge—see
27 section 339 (1) (c).

- 1 **design advice**—see section 99 (2) (b) (i).
- 2 **designated area**—see the [Australian Capital Territory \(Planning and](#)
3 **Land Management) Act 1988** (Cwlth), section 4.
- 4 **design principles**—see section 97 (1).
- 5 **design review panel** means the Design Review Panel established
6 under section 93.
- 7 **design review panel rules**—see section 96 (1).
- 8 **development**, in relation to land—see section 14 (1).
- 9 **development agreement** means a deed or contract that—
10 (a) was entered into by the lessee and the Territory or a territory
11 entity, as a condition of the grant of a lease; and
12 (b) sets out obligations with which the lessee must comply in
13 relation to development of the land described in the lease.
- 14 **development application**—see section 164 (1).
- 15 **development approval** means approval for a development under
16 chapter 7 (Development assessment and approvals).
- 17 **development proposal** means a proposal for development, whether or
18 not in a development application.
- 19 **discharge amount**, for a rural lease, for division 10.8.2 (Exceptions
20 for rural leases)—see section 345.
- 21 **district**—see the [Districts Act 2002](#), dictionary.
- 22 **district strategy**—see section 38 (1).
- 23 **division**, in relation to land—see the [Districts Act 2002](#), dictionary.
- 24 **draft EIS**—see section 110 (1) (a).
- 25 **draft land management plan**—see section 385 (1).
- 26 **draft major plan amendment**, for part 5.2 (Territory plan—major
27 plan amendments)—see section 53.

draft offsets policy guidelines—see section 231 (1).

draft review report—see section 89 (3).

draft revised offsets policy—see section 224 (2).

ecologically sustainable development—see section 9.

EIS—see section 100 (2).

EIS assessment report—see section 124 (1).

eligible entity, for chapter 15 (Notification and review of decisions)—see section 500.

ends, for an appeal, means decided, withdrawn, dismissed or struck out.

environment—each of the following is part of the environment:

- (a) the soil, atmosphere, water and other parts of the earth;
- (b) organic and inorganic matter;
- (c) living organisms;
- (d) structures, and areas, that are manufactured or modified;
- (e) ecosystems and parts of ecosystems, including people and communities;
- (f) qualities and characteristics of areas that contribute to their biological diversity, ecological integrity, scientific value, heritage value and amenity;
- (g) interactions and interdependencies within and between the things mentioned in paragraphs (a) to (f);
- (h) social, aesthetic, cultural and economic characteristics that affect, or are affected by, the things mentioned in paragraphs (a) to (f).

environmental impact assessment—see section 100 (1).

environmental significance opinion—see section 100 (2).

- 1 **EPBC Act** means the [Environment Protection and Biodiversity](#)
 2 [Conservation Act 1999](#) (Cwlth).
- 3 **essential design element**, of a development proposal—see
 4 section 185.
- 5 **exempt development**—see section 143.
- 6 **exemption assessment**—see section 149 (1).
- 7 **exemption assessment D notice**—see section 150 (2) (b).
- 8 **exemption assessor**—see section 149 (1).
- 9 **expected greenhouse gas emissions statement**, for a development,
 10 for schedule 2 (Information and documents for certain development
 11 applications)—see schedule 2, section 2.1.
- 12 **finalised**—
- 13 (a) for an EIS—see section 126; and
- 14 (b) for a public health EIS—see section 127.
- 15 **formal error** means—
- 16 (a) a clerical error; or
- 17 (b) an error arising from an accidental slip or omission; or
- 18 (c) a defect of form.
- 19 **future urban area** means an area of land identified in the territory
 20 plan for future urban development.
- 21 **government entity** includes a territory authority, territory
 22 instrumentality and an administrative unit.
- 23 **granted on a concessional basis**—see section 254 (3).
- 24 **greenhouse gas emissions**, for schedule 2 (Information and
 25 documents for certain development applications)—see the [Climate](#)
 26 [Change and Greenhouse Gas Reduction Act 2010](#), dictionary.

gross floor area, for division 10.7.3 (Variation of nominal rent leases)—see the territory plan (13 Definitions).

Gungahlin town centre, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

high-quality design principles—see section 10 (2).

holding period, for a rural lease, for division 10.8.2 (Exceptions for rural leases)—see section 345.

improvement, in relation to land, for part 10.9 (Leases—improvements)—see section 352.

incorporated association, for schedule 3 (Market value leases and leases that are possibly concessional)—see schedule 3, section 3.1.

information requirement notice—see section 470 (2).

inquiry means an inquiry into an EIS under section 130.

inquiry panel—see section 130 (1) (a).

inspector means a person appointed as an inspector under section 457.

integrated delivery principles—see section 10 (2).

interested entity, for chapter 15 (Notification and review of decisions)—see section 500.

interested person, in relation to land, for part 5.2 (Territory plan—major plan amendments)—see section 54.

investment facilitation principles—see section 10 (2).

Kingston Foreshore, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

land management agreement—see section 346 (2) (a).

land management plan—see section 391 (1).

land rent lease—see the [Land Rent Act 2008](#), dictionary.

- 1 **land sublease** means a sublease of land approved under section 280
 2 (Restriction on subletting of land) but does not include a sublease
 3 mentioned in section 281 (Subletting part of building).
- 4 **lease**—
- 5 (a) for this Act generally—see section 253; and
- 6 (b) for part 10.12 (Leases—building and development
 7 provisions)—see section 363.
- 8 **leasehold**, of a lessee, means the land held under the lease.
- 9 **lease variation charge**, for a variation of a nominal rent lease, means
 10 the lease variation charge applying under division 10.7.3 (Variation
 11 of nominal rent leases).
- 12 **lessee**—
- 13 (a) for chapter 10 (Leases and licences)—see section 252; and
- 14 (b) for a lease that has ended, for part 10.9 (Leases—
 15 improvements)—see section 352.
- 16 **light rail**—see the [Road Transport \(General\) Act 1999](#), dictionary.
- 17 **limited consultation**, for part 5.3 (Territory plan—minor plan
 18 amendments)—see section 84 (1).
- 19 **long-term focus principles**—see section 10 (2).
- 20 **major plan amendment**, part 5.2 (Territory plan—major plan
 21 amendments)—see section 53.
- 22 **management objectives**—see section 383 (1).
- 23 **market value**, of a lease, for chapter 10 (Leases and licences)—see
 24 section 252.
- 25 **market value lease**—see section 255.
- 26 **material detriment**, for schedule 6 (Reviewable decisions, eligible
 27 entities and interested entities)—see schedule 6, section 6.1.
- 28 **matter protected by the Commonwealth**—see section 218 (1).

memorial—see the [Land Titles Act 1925](#), dictionary.

Minister, for part 9.2 (Offsets policy)—see section 221.

minor plan amendment, for part 5.3 (Territory plan—minor plan amendments)—see section 82.

monitoring warrant—see section 480 (1).

natural environment, for schedule 4 (Management objectives for public land)—see schedule 4, section 4.1.

natural environment conservation principles—see section 10 (2).

new compliance time, for a building and development provision, see section 371 (1).

noncompliance fee—see section 370 (2).

nominal rent means—

(a) rent of 5 cents each year; or

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

nominal rent lease means a lease for a nominal rent.

non-standard chargeable variation, of a nominal rent lease, for division 10.7.3 (Variation of nominal rent leases)—see section 323.

occupier, of premises, for chapter 13 (Enforcement)—see section 456.

offence, for chapter 13 (Enforcement)—see section 456.

offset—see section 219.

offset condition, for a development approval—see section 240.

offset management plan, for an offset—see section 241 (1).

offset manager, for an offset management plan—see section 242.

offsets policy—see section 220.

- 1 **offsets policy guidelines**—see section 230 (1).
- 2 **offsets register**—see section 238.
- 3 **ongoing controlled activity order**, for part 12.3 (Controlled activity
- 4 orders)—see section 424 (1).
- 5 **original application**, for division 7.6.3 (Reconsideration of decisions
- 6 on development applications)—see section 195 (1) (a).
- 7 **original decision**—
- 8 (a) for division 7.6.3 (Reconsideration of decisions on development
- 9 applications)—see section 195 (1) (a); and
- 10 (b) for division 10.7.3 (Variation of nominal rent leases)—see
- 11 section 330 (1) (b).
- 12 **planning and response report**—see section 39 (1).
- 13 **planning strategy**—see section 36 (1).
- 14 **possibly concessional**, in relation to a lease—see section 256.
- 15 **pre-decision advice**, in relation to a development application, see
- 16 section 179 (1).
- 17 **premises** includes land.
- 18 **preserved lease** means a lease mentioned in an item in schedule 1,
- 19 part 1.2, column 2.
- 20 **preserved lease use**, in relation to land described in a preserved lease,
- 21 for schedule 1 (Preserved leases)—see schedule 1, part 1.1,
- 22 section 1.1.
- 23 **principles of good consultation**—see section 11 (1).
- 24 **prohibited development**—see section 152 (1).
- 25 **prohibition notice**—see section 448 (1).
- 26 **proponent**, of a development proposal, means the person proposing
- 27 the proposal.

proponent-initiated amendment, for part 5.2 (Territory plan—major plan amendments)—see section 55.

protected matter—see section 217 (1).

provision, of a lease, for chapter 10 (Leases and licences)—see section 252.

public availability notice, for a draft major plan amendment, for part 5.2 (Territory plan—major plan amendments)—see section 66 (a).

public consultation period, for a draft EIS, means—

(a) the period stated under section 112 (a) (iii); or

(b) if the period is extended under section 113 (3)—the period as extended.

Public Health Act Minister means the Minister responsible for the [Public Health Act 1997](#), section 134.

public health EIS means an EIS for a development proposal in a development application in relation to which the Public Health Act Minister has made a declaration for section 103 (When EIS is required).

public land means land identified by the territory plan as public land.

public land management plan, for an area of public land—see section 384 (1).

publicly notify—

(a) a draft EIS—see section 112; and

(b) a development application—see section 173 (1).

public notification period, for a development application—see section 173 (2).

public register—see section 493.

- 1 **reconsideration application**—
- 2 (a) for division 7.6.3 (Reconsideration of decisions on development
- 3 applications)—see section 195 (2); and
- 4 (b) for division 10.7.3 (Variation of nominal rent leases)—see
- 5 section 331 (5).
- 6 **rectification work**—see section 432.
- 7 **rectification work order**—see section 438 (1).
- 8 **referral entity**—see section 168 (1) (a).
- 9 **registered interest**, in a lease, means an interest in the lease registered
- 10 under the [Land Titles Act 1925](#).
- 11 **registered interest holder**, for division 7.5.4 (Public notification of
- 12 development applications)—see section 172.
- 13 **registered proprietor**, in relation to a lease, for chapter 10 (Leases and
- 14 licences)—see section 252.
- 15 **registered tree**—see the [Tree Protection Act 2005](#), section 9.
- 16 **related to light rail**—see section 214.
- 17 **relevant agency**, for an environmental significance opinion—see
- 18 section 136 (2).
- 19 **relevant Assembly committee**, for a provision, means a standing
- 20 committee of the Legislative Assembly nominated, in writing, by the
- 21 Speaker for the provision.
- 22 **rental lease**, for chapter 10 (Leases and licences) and schedule 3
- 23 (Market value leases and leases that are possibly concessional)—see
- 24 section 252.
- 25 **representation**—
- 26 (a) about a development application, means a representation made
- 27 under section 177; or

- 1 (b) about a draft EIS, means a representation made about the
2 draft EIS under section 113.
- 3 **residential lease**, for chapter 10 (Leases and licences) and schedule 3
4 (Market value leases and leases that are possibly concessional)—see
5 section 252.
- 6 **reviewable decision**, for chapter 15 (Notification and review of
7 decisions)—see section 500.
- 8 **rural lease**—see section 252.
- 9 **scoping document**, for a development proposal—see
10 section 107 (2) (b).
- 11 **search warrant**—see section 474 (1).
- 12 **show cause notice**, for part 12.3 (Controlled activity orders)—see
13 section 421 (1).
- 14 **significant**, in relation to an adverse environmental impact—see
15 section 102.
- 16 **significant development**—see section 92.
- 17 **single dwelling house lease**, for chapter 10 (Leases and licences)—
18 see section 252.
- 19 **standard chargeable variation**, of a nominal rent lease, for
20 division 10.7.3 (Variation of nominal rent leases)—see section 323.
- 21 **statement of planning priorities**—see section 42 (1).
- 22 **structure** includes a fence, retaining wall, swimming pool,
23 ornamental pond, mast, antenna, aerial, road, footpath, driveway,
24 carpark, culvert or service conduit or cable.
- 25 **subdivision**, for chapter 10 (Leases and licences)—see section 252.
- 26 **subdivision design application**—see section 43 (1).
- 27 **sublease**, for chapter 10 (Leases and licences)—see section 252.

- 1 **supporting report**, for part 5.2 (Territory plan—major plan
2 amendments)—see section 53.
- 3 **sustainability and resilience principles**—see section 10 (2).
- 4 **territory entity** means—
- 5 (a) a territory authority; or
- 6 (b) a territory instrumentality; or
- 7 (c) a territory-owned corporation.
- 8 **territory plan** means the territory plan under section 45.
- 9 **territory plan map**—see section 48 (1) (a).
- 10 **territory planning authority** means the Territory Planning Authority
11 established under section 16.
- 12 **territory priority project**—see section 213.
- 13 **territory priority project declaration**—see section 215 (1).
- 14 **town centre**, for schedule 7 (Matters exempt from third party ACAT
15 review)—see schedule 7, section 7.1.
- 16 **transfer**, of a lease, for part 10.12 (Leases—building and
17 development provisions)—see section 363.
- 18 **Tuggeranong town centre**, for schedule 7 (Matters exempt from third
19 party ACAT review)—see schedule 7, section 7.1.
- 20 **undertaken**, in relation to an improvement that is a building or other
21 structure, for part 10.9 (Leases—improvements)—see section 352.
- 22 **University of Canberra site**, for schedule 7 (Matters exempt from
23 third party ACAT review)—see schedule 7, section 7.1.
- 24 **University of NSW** means the University of New South Wales
25 established under the [University of New South Wales Act 1989](#)
26 (NSW), section 4.
- 27 **urban regeneration principles**—see section 10 (2).

use, of land, or of a building or other structure on land—see section 15.

variation, of a lease—

(a) includes the surrender of the lease and the grant of a new lease to the same lessee, subject to different provisions, over land that—

(i) is all or part of the land described in the surrendered lease; and

(ii) is not in an area identified in the territory plan as a future urban area; and

(b) without limiting paragraph (a), includes the surrender of a concessional lease and the grant of a new lease to the same lessee as a market value lease; and

(c) includes the consolidation, or subdivision, of the lease; but

(d) does not include—

(i) the surrender of the lease and the grant of a further lease under section 285 (Grant of further leases); or

(ii) a variation to a deed that is incorporated into, or referred to in, the lease, if the deed is varied in a way that is provided for in the deed.

Woden town centre, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

working out statement, for division 10.7.3 (Variation of nominal rent leases)—see section 330 (2).

zone means a zone identified in the territory plan.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 21 September 2022.

2 Notification

Notified under the [Legislation Act](#) on 2023.

3 Republications of amended laws

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