

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Planning and Development Bill 2006

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EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Planning and Development Bill 2006

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 and Development Act 2006*.

2 Commencement

This Act commences on 1 July 2007.

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

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 '*conservation requirement*—see the *Heritage Act 2004*, dictionary.' means that the term 'conservation requirement' 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.

Chapter 2 Main object and important concepts

6 Main object of Act

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

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

7 Meaning of *development*

In this Act:

development, in relation to land, includes the following:

- (a) the erection, alteration or demolition of a building or structure on the land;
- (b) the carrying out of earthworks or other construction work on or under the land;
- (c) beginning a new use of land or a building or structure on the land;

- (d) change of use of land, or a building or structure on the land, whether by adding a use or stopping a use and substituting another use;

Note Development approval is not required for continuing use lawfully commenced (see s 125).

- (e) subdivision or consolidation of land (whether by lease variation or otherwise);
- (f) variation of a lease relating to the land (including surrender of the lease and grant of a new lease in different terms);
- (g) variation of a lease granted as a concessional lease by surrender and regrant of the lease as a market value lease;
- (h) the erection, fixing or display of a sign or advertising material otherwise than in accordance with a licence issued under this Act or permit under the *Roads and Public Places Act 1937*.

8 Meaning of *sustainable development*

For this Act:

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

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

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

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

Chapter 3 The planning and land authority and chief planning executive

Part 3.1 The planning and land authority

9 Establishment of authority

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

10 Territory bound by actions of authority

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

Part 3.2

Functions of planning and land authority

11 Planning and land authority functions

- (1) The planning and land authority has the following functions:
- (a) to prepare and administer the territory plan;
 - (b) to continually assess the territory plan and propose amendments 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;
 - (e) to maintain the digital cadastral database under the *Districts Act 2002*;
 - (f) to make available land information;
 - (g) to grant, administer, vary and end leases on behalf of the Executive;
- Note* Under s 205 the planning and land authority is authorised to grant, on behalf of the Executive, leases the Executive may grant on behalf of the Commonwealth.
- (h) to grant licences over unleased territory land;
 - (i) to decide applications for approval to undertake development;
 - (j) to regulate the building industry;
 - (k) to make controlled activity orders under part 11.4 (Controlled activity orders);

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

Note The provision of planning services to somebody other than the Territory is subject to s 16.

- (m) to review its own decisions;
- (n) to ensure community consultation and participation in planning decisions;
- (o) to promote public education and understanding of the planning process, including by providing easily accessible public information and documentation on planning and land use.

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

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

- (3) The planning and land authority must exercise its functions—
 - (a) in a way that has regard to sustainable development; and
 - (b) taking into consideration the statement of planning intent.

Note For the meaning of *sustainable development*, see s 8. The statement of planning intent is dealt with in s 15.

12 Planning and land authority to comply with directions

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

Note The Minister may give the planning and land authority directions under s 13, s 60, s 73, s 90, s 92, s 144, s 213 (2) and s 283.

Part 3.3 Operations of planning and land authority

13 Ministerial directions to planning and land authority

- (1) The Minister may give a written direction to the planning and land authority—
 - (a) about the general policies the authority must follow; or
 - (b) requiring the authority to revise the territory plan, or a provision of the plan, or review the plan.
- (2) Before giving a direction the Minister must—
 - (a) tell the planning and land 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) The Minister must—
 - (a) present a copy of a direction to the Legislative Assembly not later than 6 sitting days after the day it is given to the planning and land authority; and
 - (b) if the copy would not be presented to the Legislative Assembly before the end of the period of 10 working days after the day the direction is given to the authority—give a copy to the members of the Assembly before the end of the 10-day period.

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

- (5) A direction is a notifiable instrument.

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

14 Assembly may recommend directions to authority

- (1) The Legislative Assembly may, by resolution, recommend that the Minister give the planning and land authority a stated direction under section 13.
- (2) The Minister must consider the recommended direction and must either—
- (a) direct the planning and land authority under section 13; or
 - (b) tell the Legislative Assembly that the Minister does not propose to direct the authority as recommended.
- (3) A direction mentioned in subsection (2) (a) may be in accordance with the Legislative Assembly's resolution or as changed by the Minister.

15 Statement of planning intent

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

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

Example

The statement of planning intent may include policy material inconsistent with the territory plan, but the plan would have to be amended before the policy could be implemented.

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

16 Provision of planning services to others—ministerial approval

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

17 Reports by planning and land authority to Minister

- (1) The planning and land authority must give the Minister a report, or information about its operations, required by the Minister.

- (2) A report under this section must be prepared in the form (if any) that the Minister requires.
- (3) This section is in addition to any other provision about the giving of reports or information by the planning and land authority.

18 Authority's annual report

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

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

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

19 Delegations by authority

- (1) The planning and land authority may delegate—
 - (a) the authority's functions under this Act or another territory law to a public servant who is an authority staff member; and
 - (b) the authority's functions under part 9.11 (Licences for unleased land) and part 10.7 (Licences for public land) in relation to an area of land to the custodian of the land.
- (2) The planning and land authority may also delegate the function of granting leases on behalf of the Executive to the land agency.

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

Part 3.4 The chief planning executive

20 Appointment of chief planning executive

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

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

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

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

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

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

- (4) An appointment is a notifiable instrument.

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

21 Chief planning executive's employment conditions

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

22 Functions of chief planning executive

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

23 Suspension or ending of chief planning executive's appointment

- (1) The Executive may suspend the chief planning executive from duty—
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity, if the incapacity affects the exercise of the chief planning executive's functions; or
 - (c) if the chief planning executive is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
 - (d) if the chief planning executive is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.
- (2) The Minister must present to the Legislative Assembly a statement of the reasons for the suspension not later than the first sitting day after the day the chief planning executive is suspended.
- (3) If, not later than 6 sitting days after the day the statement is presented, the Legislative Assembly resolves to require the Executive to end the chief planning executive's appointment, the Executive must end the chief planning executive's appointment.

- (4) The chief planning executive's suspension ends—
- (a) if the Minister does not comply with subsection (2)—at the end of the day the Minister should have presented to the Legislative Assembly the statement mentioned in that subsection; or
 - (b) if the Assembly does not pass a resolution mentioned in subsection (3) before the end of the 6 sitting days—at the end of the 6th sitting day.
- (5) The chief planning executive is entitled to be paid salary and allowances while suspended.

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

Part 3.5 Authority staff and consultants

24 Authority staff

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

25 Authority consultants

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

Part 3.6 Public register and associated documents

26 Authority to keep public register

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

27 Contents of public register

- (1) The public register must contain the following:
 - (a) for each development application—
 - (i) the date the application was lodged; and
 - (ii) the applicant's name; and
 - (iii) the location of the proposed development, with both the street address and the division, block and section number; and
 - (iv) a summary by the planning and land authority of the proposed development; and
 - (v) if the application has been, or is being, publicly notified under division 7.3.4; and
 - (vi) if representations under section 143 have been received on the application; and
 - (vii) whether the application has been amended under section 178; and

- (viii) whether the application has been withdrawn (see s 136);
and
- (ix) whether the application has been amended under
section 133;
- (b) if a development application has been decided under
section 148—
 - (i) the date the application was decided; and
 - (ii) whether the application has been approved, approved
subject to a condition or refused; and
 - (iii) whether the decision was made by the Minister after
calling in the application under division 7.3.5; and
 - (iv) whether the decision on the application has been
reconsidered under division 7.3.10; and
 - (v) whether the approval has been amended under
section 178;
- (c) in relation to each controlled activity order while the order is in
force—
 - (i) the location of the place to which the order relates, with
both the street address and the division, block and section
number; and
 - (ii) the directions in the order (see s 322 (3)).
- (2) The public register may contain any other information (other than
associated documents for development applications, development
approvals or leases) that the planning and land authority considers
appropriate.

Note *Associated document*—see s 29.

(3) To remove any doubt—

- (a) information on the public register about a controlled activity order (mentioned in subsection (1) (c)) must not include the name of any person to whom the order is directed; and
- (b) if the planning and land authority approves an exclusion application under section 372 in relation to part of a document required to be included on the register, the part of the document must not be included in the public register.

Note A note about the exclusion must be included in the register (see s 372 (7)).

28 Inspection etc of public register and associated documents

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

Note A fee may be determined under s 378.

29 Meaning of *associated document*—pt 3.6

- (1) For this part, each of the following is an *associated document* for a development application:
 - (a) information required under section 128 (2) (c), (d) (i) or (e) (i) to accompany an application;
 - (b) an assessment required under section 128 (2) (d) (ii) or (g) to accompany the application;

- (c) an EIS required under section 128 (2) (e) (ii) to accompany the application;
- (d) a survey certificate required under section 128 (2) (h) to accompany the application;
- (e) if the planning and land authority has asked for further information under section 130—information provided in accordance with the request;
- (f) if the planning and land authority corrects the application under section 132—the notice of the correction (see s 132 (2));
- (g) if the applicant has asked the authority to amend the development application under section 133—
 - (i) any document provided by the applicant to support the request; and
 - (ii) if the authority decides to amend the application—the notice of the decision to amend (see s 133 (3));
- (h) an agreement by an entity to the development proposed in the application (see s 137 (2) (b));
- (i) if the application is referred to an entity under division 7.3.3—the advice of the entity in relation to the development application (see s 138 (2));
- (j) if 1 or more representations have been made under section 143 about the application—each representation;
- (k) if the Minister decides the application—the statement by the Minister in relation to the application presented to the Legislative Assembly under section 147 (2);
- (l) the notice of the decision on the application given under division 7.3.8;

- (m) if the applicant for the development application applies under section 173 for reconsideration of a decision to refuse to approve the development—any information included in the application;
 - (n) if the planning and land authority reconsiders a decision to refuse to approve the development—the notice of the decision on reconsideration under section 176.
- (2) For this part, each of the following is an *associated document* for a development approval:
- (a) if the approval holder applies under section 173 for reconsideration of the decision to approve the development subject to conditions—any information included in the application;
 - (b) if the planning and land authority reconsiders the decision to approve the development subject to conditions—the notice of the decision on reconsideration under section 176;
 - (c) if the planning and land authority corrects the approval under section 177—the notice about the correction (see s 177 (2));
 - (d) if the approval holder has applied to amend the approval under section 178—any information included in the application.
- (3) However, for this part, an *associated document* does not include—
- (a) the plans or specifications of any residential part of a building or proposed building, other than plans or specifications that only show the height and external configuration of the building or proposed building; or
 - (b) information in relation to which an exclusion application has been approved under section 372.

Chapter 4 The land development agency

Part 4.1 Establishment and functions of land agency

Note to pt 4.1

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

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

30 Establishment of land agency

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

31 Functions of land agency

- (1) The land agency has the following functions:
 - (a) to develop land;
 - (b) to carry out works for the development and enhancement of land;
 - (c) to carry out strategic or complex urban development projects.
- (2) The land agency may exercise any other function given to the land agency under this Act or another territory law.

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

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

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

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

32 Land agency functions to be exercised in accordance with directions

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

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

Part 4.2 Financial and general land agency provisions

Note to pt 4.2

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

33 Proceeds of lease sales

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

34 Payment of funds to Territory

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

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

35 Liability for territory taxes

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

36 Ministerial directions to land agency

- (1) The Minister may give written directions to the land agency about the principles that are to govern the exercise of its functions.
- (2) Before giving a direction, the Minister must—
 - (a) tell the land agency about the proposed direction; and
 - (b) give the land agency reasonable opportunity to comment on the proposed direction; and

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

(3) A direction is a notifiable instrument.

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

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

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

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

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

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

38 Land agency board committees

(1) The land agency board—

(a) must establish an audit committee; and

(b) may establish any other committee; and

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

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

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

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

39 Land agency's annual report

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

- (a) a copy of any direction given under section 36 (Ministerial directions to land agency) during the year; and
- (b) a statement by the land agency about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

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

40 Delegation by land agency

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

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

Part 4.3 Land agency board

41 Establishment of land agency board

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

42 Land agency board members

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

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

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

- (2) The Minister must try to ensure that the following disciplines and areas of expertise are represented among the members appointed:
- (a) land development;
 - (b) economics;
 - (c) public law;
 - (d) finance or accounting;
 - (e) public administration;
 - (f) engineering.
- (3) The following people must not be appointed as members of the land agency board:
- (a) the chief planning executive;
 - (b) a member of the planning and land authority staff.

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

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

Part 4.4 Land agency staff and consultants

43 Land agency staff

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

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

44 Land agency consultants

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

Chapter 5 Territory plan

Part 5.1 The territory plan, its object and effect

45 Territory plan

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

Note 1 Land in designated areas in the ACT is governed by the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth).

Note 2 The territory plan can be varied (see pt 5.3).

46 Public availability of territory plan

The territory plan is a notifiable instrument.

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

47 Main object of territory plan

The main object of the territory plan is to ensure that the planning and development of the ACT provides the people of the ACT with a sustainable, healthy, attractive, safe and efficient environment in which to live, work and have their recreation.

48 Giving effect to main object of territory plan

- (1) The territory plan must give effect to its main object in a way not inconsistent with the national capital plan.
- (2) The territory plan must give effect to its main object in a way that gives effect to the sustainability principles.

- (3) The territory plan must set out the planning principles and policies for giving effect to its main object.

49 Effect of territory plan

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

Note The Territory, the Executive, a Minister or a territory authority are also prevented from doing anything inconsistent with some draft variations of the territory plan (see s 63 and s 69).

Part 5.2 Contents of territory plan

50 Contents of territory plan

- (1) The territory plan must include the following:
 - (a) a statement of strategic directions;
 - (b) policy objectives for each zone identified in each territory plan map;
 - (c) development tables;
 - (d) codes for areas, zones and features in the ACT;
 - (e) maps (the *territory plan maps*).

Note For more about development tables, see s 53. For more about codes, see s 54. For more about territory plan maps, see s 55.

- (2) The territory plan may, but need not—
 - (a) identify future urban areas and the zones within those areas; and
 - (b) identify areas of public land reserved in the plan (whether in a map or elsewhere in the plan) for a purpose mentioned in section 276 (Reserved areas—public land); and
 - (c) include anything else relevant to the main object of the territory plan.

51 Statement of strategic directions

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

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

52 Policy objectives

- (1) The policy objectives for a zone set out the intended use and development for the zone.
- (2) Each policy objective must be consistent with the statement of strategic directions.

53 Development tables

- (1) A development table for a zone must set out—
 - (a) which assessment track applies to development proposals; and
 - (b) the development proposals that are exempt from requiring development approval and the development that is prohibited; and

- (c) the code that development proposals must comply with.

Example

A multi-unit development in a high-density area may simply be required to comply with a code for multi-unit developments. The same development in a suburban zone may be required to comply with the code, and also meet merit criteria stated in the development table that applies to the development.

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

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

Example of possible condition

A development proposal is exempt from requiring development approval if the building plans for the proposal comply with the single residence code in the development table that applies to the proposal.

54 Codes in territory plan

- (1) A code in the territory plan must contain—
- (a) the detailed rules (the *code requirements*) that apply to development proposals the code applies to; and
 - (b) the criteria (the *merit criteria*) that apply to development proposals the code applies to, other than proposals in the code track.
- (2) A code must be consistent with any policy objective that applies to the code.
- (3) A code that sets out the requirements that apply to stated areas, or places or states that it is a precinct code, is a *precinct code*.

Note A concept plan is a precinct code (see s 85 (b)).

- (4) A code that sets out the requirements for types of development, or states that it is a development code, is a ***development code***.
- (5) A code that states that it is a general code, or that is not a precinct code or a development code, is a ***general code***.

55 Territory plan maps

At least 1 territory plan map must set out zones, precincts and designated areas in the ACT.

Part 5.3 Variations of territory plan

Note to pt 5.3

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

Division 5.3.1 Overview and interpretation—pt 5.3

56 How the territory plan is varied under pt 5.3

- (1) A variation of the territory plan begins when—
 - (a) the planning and land authority prepares a draft plan variation (see s 58); or
 - (b) the Minister directs the authority to revise the territory plan or a provision of the plan (see s 13 (1) (b)); or
 - (c) the authority takes action in relation to a technical amendment under section 82; or
 - (d) a future urban area, or part of a future urban area, is rezoned (see s 87).
- (2) If the planning and land authority prepares a draft plan variation, the authority must prepare a consultation notice (see s 61) that invites comments on the draft plan variation and, once publicly notified, may give the draft plan variation interim effect (see s 62 and s 63).
- (3) The planning and land authority—
 - (a) may revise or withdraw the draft plan variation after the end of public consultation (see s 66); and

- (b) unless the variation is withdrawn, must—
 - (i) give the variation to the Minister for approval (see s 67);
and
 - (ii) give notice that the variation and other documents are
available for public inspection (see s 68).
- (4) If notice is given of the draft plan variation's availability for
inspection, the draft plan variation notified has interim effect (see
s 69).
- (5) The Minister may, after receiving a committee report about the draft
plan variation or in other circumstances, approve the plan variation,
or take other action under section 73 (Minister's powers in relation
to draft plan variations).
- (6) The Minister may revoke an approval of a draft plan variation
before presenting the approved plan variation to the Legislative
Assembly (see s 74), but otherwise must present the approved plan
variation to the Legislative Assembly (see s 76).
- (7) The Legislative Assembly may reject the plan variation (see s 77)
but, if the plan variation is not rejected, the Minister must fix a day
when the variation commences (see s 79).
- (8) Different provisions apply to a plan variation in relation to technical
amendments (see s 82) and future urban zones (see pt 5.5).

57 Definitions—pt 5.3

In this part:

background papers, in relation to a draft plan variation or plan variation—each of the following is a *background paper* in relation to the variation:

- (a) an explanatory statement;
- (b) a copy of—
 - (i) any relevant direction of the Minister; and
 - (ii) any comment made on the draft plan variation or plan variation during consultation under this chapter by any of the following:
 - (A) the national capital authority;
 - (B) the conservator of flora and fauna;
 - (C) the heritage council; and
 - (iii) any relevant planning report or strategic environmental assessment;
- (c) a statement, by the planning and land authority, of the reasons for any inconsistency between the draft plan and—
 - (i) a direction mentioned in paragraph (b) (i); or
 - (ii) a comment mentioned in paragraph (b) (ii); or
 - (iii) a recommendation in a relevant planning report or strategic environmental assessment;

- (d) any other document—
 - (i) considered by the authority to be necessary or useful in explaining the variation; or
 - (ii) designated by the authority in writing as a background paper.

consultation comments, in relation to a draft plan variation—see section 61 (1) (b).

consultation notice, for a draft plan variation—see section 61 (1).

consultation period, for a draft plan variation—see section 61 (1) (a).

corresponding plan variation, for a draft plan variation, means the plan variation developed from the draft plan variation.

draft plan variation—see section 58.

Division 5.3.2 Consultation on draft plan variations

58 Preparation of draft plan variations

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

59 Consultation etc about draft plan variations being prepared

The planning and land authority must, in preparing a draft plan variation under section 58—

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

- (b) consult with each of the following in relation to the proposed draft plan variation:
 - (i) the national capital authority;
 - (ii) the conservator of flora and fauna;
 - (iii) the heritage council;
 - (iv) if the draft plan variation, if made, would be likely to affect unleased land or leased public land—each custodian for the land likely to be affected; and
- (c) consider any relevant planning report or strategic environmental assessment; and

Note The planning and land authority may prepare a planning report or strategic environmental assessment in relation to the proposed draft plan variation (see s 90 and s 92).

- (d) if the draft plan variation would, if made, vary the statement of strategic directions—consider whether the draft plan variation, if made, would promote the planning strategy.

60 Ministerial requirements for draft plan variations being prepared

- (1) This section applies if the authority tells the Minister under section 59 that the authority is preparing a draft plan variation.
- (2) The Minister may direct the planning and land authority to do 1 or both of the following:
 - (a) to prepare a planning report or strategic environmental assessment in relation to the draft plan variation that the authority is preparing;

- (b) to tell the Minister when the draft plan variation being prepared is ready to be notified under section 61.

Note 1 The planning and land authority must comply with a direction given by the Minister (see s 12).

Note 2 Requirements for planning reports and strategic environmental assessments are dealt with in pt 5.6.

- (3) To remove any doubt, the validity of a corresponding plan variation for a draft plan variation is not affected by a failure to comply with subsection (2) (b) in relation to the draft plan variation.

61 Public consultation—notification

- (1) Before giving a draft plan variation to the Minister for approval under section 67, the planning and land authority must prepare a notice (a ***consultation notice***)—
- (a) stating that copies of the draft plan variation and the background papers are available for public inspection and purchase during a stated period of not less than 15 working days (the ***consultation period***) at stated places; and
 - (b) inviting people to give written comments (***consultation comments***) about the draft plan variation to the authority at a stated address during the consultation period; and
 - (c) stating that copies of written comments about the draft plan variation, given in response to the invitation in paragraph (b) or otherwise, or received from the national capital authority, will be made available (unless exempted) for public inspection for a period of at least 15 working days starting on the day after the day the consultation period ends, at stated places; and
 - (d) that complies with section 62.

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

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

- (3) The following are notifiable instruments:

- (a) the consultation notice;
- (b) any extension notice.

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

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

Note The planning and land authority must make copies of the draft plan variation and background papers mentioned in the consultation notice available (see s 64).

- (5) This section does not apply in relation to a draft plan variation that has been revised by the planning and land authority in accordance with a requirement under section 73 (2) (b) (Minister's powers in relation to draft plan variations).

62 Public consultation—notice of interim effect etc

- (1) A consultation notice must state—
- (a) whether or not section 63 applies in relation to the draft plan variation, or part of the draft variation; and
 - (b) if section 63 applies—why section 63 is to apply.
- (2) A consultation notice that states that section 63 applies—
- (a) must also state the effect of section 63; and

- (b) may also state, for section 63 (2), a period not longer than 1 year that is the maximum period during which the draft variation, or part, is to have interim effect.
- (3) The validity of a consultation notice that states that section 63 applies is not affected by a failure to state why section 63 is to apply.

63 Effect of draft plan variations publicly notified

- (1) This section applies to a draft plan variation if a consultation notice states that it applies.
- (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 varied in accordance with the draft plan variation.

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 49).

- (3) In this section:

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

- (a) beginning on the day (the *notification day*) when the consultation notice for the draft plan variation is notified under the Legislation Act (see s 61); and
- (b) ending on the day the earliest of the following happens:
 - (i) the day the draft plan variation is given to the Minister under section 67;

(ii) the day the draft variation, or the corresponding plan variation, is withdrawn under section 66 (1) (b) or section 73 (2) (b) (v);

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

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

64 Public consultation—availability of draft plan variations etc

- (1) The planning and land authority must make copies of the draft plan variation and the background papers mentioned in a consultation notice available for public inspection and purchase during office hours during the consultation period and at the places stated in the consultation notice.
- (2) If, in the planning and land authority's opinion, it would not be in the public interest for part of the draft plan variation or of any background paper to be published, the authority must exclude that part from each copy of the document made available under subsection (1).
- (3) If part of the draft plan variation or a background paper is excluded from the copies of the document made available for public inspection or purchase under subsection (1), each copy of the document must include a statement to the effect that an unmentioned part of the document has been excluded in the public interest.

65 Public inspection of comments on draft plan variations

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

Note This section is subject to s 372.

Division 5.3.3 Action after consultation about draft plan variations

66 Revision and withdrawal of draft plan variations

- (1) After the end of the consultation period for a draft plan variation, the planning and land authority may—
 - (a) revise the draft plan variation; or
 - (b) withdraw the draft plan variation.
- (2) The withdrawal of a draft plan variation must include a statement of the effect of section 63 (Effect of draft plan variations publicly notified) in relation to the withdrawal.
- (3) The withdrawal of a draft plan variation is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
- (4) The planning and land authority must also publish the withdrawal of a draft plan variation in a daily newspaper on the same day, or as soon as practicable after, the authority prepares the withdrawal.

- (5) In revising or withdrawing a draft plan variation under subsection (1), the planning and land authority must consider written comments (including consultation comments) about the draft variation received from any entity, including the national capital authority.
- (6) In addition to its power under subsection (1), the planning and land authority may, at any time before a draft plan variation is given, or given again, to the Minister, revise the variation to correct a formal error.

Division 5.3.4 Draft plan variations given to Minister

67 Draft plan variations to be given to Minister etc

- (1) This section applies to a draft plan variation—
 - (a) if—
 - (i) the consultation period for the variation has ended; and
 - (ii) the planning and land authority has not withdrawn the variation under section 66; and
 - (b) if the draft plan variation has been varied under section 66—as varied under section 66.
- (2) The planning and land authority must give the draft plan variation to the Minister for approval, together with—
 - (a) the background papers relating to the variation; and
 - (b) a written report setting out the issues raised in any written comments (including consultation comments) about the variation; and

- (c) a written report about the authority's consultation with—
 - (i) the public; and
 - (ii) the national capital authority; and
 - (iii) the conservator of flora and fauna; and
 - (iv) the heritage council; and
 - (v) if the draft plan variation, if made, would be likely to affect unleased land or leased public land—each custodian for the land likely to be affected; and
- (d) a copy of any written document given to the Minister by the national capital authority in relation to the draft plan variation.

Note The Minister must give a copy of the documents given to the Minister under this section to a committee of the Legislative Assembly (see s 70).

68 Public notice of documents given to Minister

- (1) The planning and land authority must prepare a notice stating that the documents mentioned in section 67 (2) (including the draft plan variation) are available for public inspection.
- (2) The notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
- (3) The planning and land authority must also publish the notice in a daily newspaper.
- (4) The planning and land authority must make copies of the documents mentioned in section 67 (2) available for public inspection during office hours during the period, and at the places, stated in the notice.

69 Effect of draft plan variations given to Minister

- (1) This section applies to a draft plan variation given to the Minister under section 67.
- (2) The Territory, the Executive, a Minister or a territory authority must not, during the defined period, do or approve the doing of anything that would be inconsistent with the territory plan if it were varied in accordance with the draft plan variation.

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 49).

- (3) In this section:

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

- (a) beginning on the day (the ***notification day***) when the draft plan variation given to the Minister is notified under the Legislation Act (see s 68); and
- (b) ending on the day the earliest of the following happens:
 - (i) the day the corresponding plan variation, or part of it, is approved under section 79 or section 80;
 - (ii) the day the corresponding plan variation is rejected by the Legislative Assembly;
 - (iii) the day the corresponding plan variation is withdrawn in accordance with a requirement under section 73 (2) (b) (v) or section 80 (3) (b);
 - (iv) the period of 1 year after notification day ends.

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

Division 5.3.5 Consideration of draft plan variations by Assembly committee

70 Consideration of draft plan variations by Legislative Assembly committee

- (1) This section applies if the Minister is given a draft plan variation under section 67.
- (2) The Minister may, not later than 20 working days after the day the Minister receives the draft plan variation, refer the draft plan variation documents to an appropriate committee of the Legislative Assembly together with a request that the committee report on the draft plan to the Legislative Assembly.
- (3) To remove any doubt, if the Minister does not refer a draft plan variation to an appropriate committee of the Legislative Assembly, the committee is not prevented from considering the draft plan variation documents if the draft plan variation is otherwise referred to the committee.
- (4) In this section:

draft plan variation documents means—

- (a) the draft plan variation; and
- (b) the documents mentioned in section 67 (2) that relate to the draft plan variation.

71 Committee reports on draft plan variations

- (1) This section applies if the Minister has referred a draft plan variation to a committee of the Legislative Assembly under section 70.

- (2) The Minister—
 - (a) must not take action under section 73 in relation to the draft plan variation until the committee of the Legislative Assembly has reported on the variation (unless section 72 applies); and
 - (b) after the committee reports on the variation—must take action under section 73 in relation to the variation.

72 Committee fails to report promptly on draft plan variations

- (1) This section applies if—
 - (a) the Minister has referred a draft plan variation to a committee of the Legislative Assembly under section 70; and
 - (b) the committee has not reported on the variation by the end of the period of 6 months starting on the day after the day the report is referred.
- (2) The Minister may take action under section 73 in relation to the variation, even though the committee of the Legislative Assembly has not reported on the variation.

Division 5.3.6 Ministerial and Legislative Assembly action on draft plan variations

73 Minister's powers in relation to draft plan variations

- (1) This section applies if—
 - (a) the Minister is given a draft plan variation under section 67 or section 75 (3) or (4); or
 - (b) the Minister revokes the approval of a plan variation (see s 74).

- (2) The Minister must—
- (a) approve the draft plan variation in the form given; or
 - (b) return the draft plan variation to the planning and land authority and direct the authority to do 1 or more of the following:
 - (i) conduct further stated consultation;
 - (ii) consider any relevant planning report or strategic environmental assessment;
 - (iii) consider any revision suggested by the Minister;
 - (iv) revise the draft plan variation in a stated way;
 - (v) withdraw the draft plan variation.
- (3) Before taking action under subsection (2), the Minister must consider—
- (a) any recommendation made by a committee of the Legislative Assembly in relation to the draft variation, or related documents, referred to the committee under section 70; and
 - (b) if the draft plan variation would, if made, vary the statement of strategic directions—whether the variation would promote the planning strategy.
- Note for par (a)*
- The Minister must not take action under this section in some circumstances if the committee has not reported (see s 71 and s 72).
- (4) The following are notifiable instruments:
- (a) a direction under subsection (2) (b);

- (b) the withdrawal of a draft plan variation by the planning and land authority as directed under subsection (2) (b) (v).

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

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

74 Minister may revoke approval of draft plan variations before presentation

- (1) This section applies if—
 - (a) the Minister has approved a draft plan variation under section 73 (2) (a); and
 - (b) the plan variation has not been presented to the Legislative Assembly.
- (2) The Minister may revoke the approval and return the plan variation to the planning and land authority.
- (3) A plan variation returned to the planning and land authority under this section must be treated by the Minister as a draft plan variation to which section 73 applies.

75 Return of draft plan variations to authority

- (1) This section applies if the Minister returns a draft plan variation to the planning and land authority with a direction under section 73 (2) (b).
- (2) The planning and land authority must comply with each direction.

- (3) If the direction is given under section 73 (2) (b) (i), (ii) or (iii), the planning and land authority may revise the draft variation and give it to the Minister for approval with—
 - (a) a written report about the authority's compliance with the Minister's direction; and
 - (b) a written report about any further revision of the draft variation under section 66 (6).
- (4) If the direction is given under section 73 (2) (b) (iv), the planning and land authority must give the Minister the draft variation, as revised in accordance with the direction, together with a written report about any further revision of the draft variation under section 66 (6).

76 Presentation of plan variations to Legislative Assembly

- (1) The Minister must present to the Legislative Assembly, not later than 5 sitting days after the day the Minister approves a plan variation, copies of each the following:
 - (a) the plan variation;
 - (b) the background papers relating to the variation;
 - (c) any report mentioned in section 75 (3) or (4).
- (2) Subsection (1) is subject to section 74 (Minister may revoke approval of draft plan variations before presentation).
- (3) If a plan variation is not presented to the Legislative Assembly in accordance with subsection (1), the plan variation does not come into effect.

77 Assembly may reject plan variations completely or partly

- (1) The Legislative Assembly may by resolution reject a plan variation, or a provision of the plan variation, presented to the Assembly.
- (2) Notice (a *rejection notice*) of a motion to reject the plan variation or a provision of the plan variation must be given not later than 5 sitting days after the day the plan variation is presented to the Legislative Assembly.
- (3) The plan variation or provision stated in a rejection notice given in accordance with subsection (2) is taken to have been rejected by the Legislative Assembly if, at the end of 5 sitting days after the day the rejection notice has been given in the Legislative Assembly—
 - (a) the motion has not been called on; or
 - (b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.
- (4) However, subsection (5) applies if, before the end of 5 sitting days after the day a rejection notice has been given in the Legislative Assembly in accordance with subsection (2)—
 - (a) the Legislative Assembly is dissolved or expires; and
 - (b) at the time of dissolution or expiry—
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.
- (5) If this subsection applies, the plan variation is taken, for subsections (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.

**78 Consequences of rejection of plan variations by
Legislative Assembly**

- (1) This section applies if a plan variation is completely rejected under section 77 (1), or taken to be completely rejected under section 77 (3).

- (2) The plan variation does not come into force if this section applies.

Note The interim effect of the draft plan variation also ends (see s 69 (3), def *defined period*, par (b) (i)).

- (3) The planning and land authority must prepare a notice stating that the plan variation has been rejected.

- (4) The notice is a notifiable instrument.

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

- (5) The planning and land authority must also publish the notice in a daily newspaper on the same day, or as soon as practicable after, the rejection is notified under the Legislation Act.

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

79 Commencement and publication of plan variations

- (1) This section applies if—
- (a) at the end of 5 sitting days after the day a plan variation is presented to the Legislative Assembly, the Assembly has not passed a resolution rejecting the variation or any provision of it; and
 - (b) the plan variation, or a provision of the plan variation, is not taken to have been rejected under section 77 (3).

- (2) The Minister must fix a day when the plan variation is to commence.

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

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

80 Partial rejection of plan variations by Legislative Assembly

- (1) This section applies if a plan variation is partly rejected under section 77 (1) (Assembly may reject plan variations completely or partly), or taken to be partly rejected under section 77 (3).
- (2) A provision of a plan variation does not come into force if—
- (a) it is rejected, or taken to be rejected, by the Legislative Assembly under section 77 (1) or (3); or
 - (b) it is withdrawn under subsection (3) (b).

- (3) The Minister must, in relation to each provision of the plan variation that is not rejected—

- (a) fix a day when the provision (an *approved provision*) is to commence; or
- (b) withdraw the provision.

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

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

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

81 Partial rejection of plan variations—newspaper publication etc

- (1) The planning and land authority must publish in a daily newspaper details of—
- (a) a commencement notice under section 80 (3) (a) for a provision (an *approved provision*); or
- (b) a withdrawal notice under section 80 (3) (b).
- (2) The details of a commencement notice published under subsection (1) (a) for an approved provision must include details of where, and for what period, copies of the provision may be inspected or purchased.
- (3) The planning and land authority must make copies of each approved provision available for inspection or purchase during office hours at the place or places, and during the period, published in the newspaper under subsection (2).

Part 5.4

Plan variations—technical amendments

82 **Technical amendments of territory plan**

- (1) Each of the following territory plan variations are technical amendments:
 - (a) a variation 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) a variation (other than a variation in relation to a future urban area) that—
 - (i) only changes a code; and
 - (ii) is consistent with the policy purpose and policy framework of the code;
 - (c) a variation in relation to a future urban area under section 87 (Rezoning in future urban areas) or section 88 (When land ceases to be in future urban area).
- (2) If the planning and land authority is satisfied that a draft plan variation would, if made, be a technical amendment—
 - (a) the draft plan variation is a notifiable instrument; and

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

- (b) a consultation notice need not be prepared for the variation.

Part 5.5 Plan variations—structure plans and rezoning in future urban zones

83 Including structure plan by plan variation

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

84 What is a *structure plan*?

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

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

Note 2 Certain development may be prohibited in future urban areas (see s 126).

85 What is a *concept plan*?

A concept plan—

- (a) applies the principles and policies in the structure plan to future urban areas; and
- (b) is a precinct code in the territory plan (see s 54 (3)) that guides—
 - (i) the preparation and assessment of development in future urban areas to which the concept plan relates; and
 - (ii) assessment of development once the areas cease to be future urban areas.

86 What is an estate development plan?

- (1) An *estate development plan*, for an estate, sets out the proposed development of the estate in a way that is consistent with the concept plan for the area where the estate is.
- (2) An estate development plan must contain—
 - (a) the block boundaries proposed for the estate; and
 - (b) the zones proposed for the estate.
- (3) An estate development plan may include the following for the estate:
 - (a) road layout;
 - (b) infrastructure works and landscaping;
 - (c) particular areas for particular detailed purposes (for example, an area zoned for community purposes may be stated in the plan to be proposed to be for a place of worship);
 - (d) building envelopes;
 - (e) design and construction of buildings and other structures;
 - (f) a tree management plan;
 - (g) layout of reticulated services;
 - (h) works on public land.

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

87 Rezoning in future urban areas

The planning and land authority may vary the territory plan under section 82 (Technical amendments of territory plan) to rezone land in a future urban area unless the rezoning is inconsistent with the principles and policies in the structure plan for the area.

88 When land ceases to be in future urban area

- (1) This section applies to an area of land dealt with by an estate development plan if the plan is approved under a development application.
- (2) The planning and land authority must vary the territory plan under section 82 (Technical amendments of territory plan) to identify the zones that will apply to the land, consistently with the estate development plan.
- (3) A variation of the territory plan under subsection (2) has the effect of the land dealt with by the estate development plan ceasing to be in a future urban area.
- (4) Not later than 5 working days after the day a variation of the territory plan under subsection (2) is notified under the Legislation Act, the planning and land authority must publish a notice in a daily newspaper that—
 - (a) states the variation made to the plan; and
 - (b) includes a copy of the map that was included in the variation; and
 - (c) states when the variation to the plan took effect or is to take effect.

Part 5.6 Planning reports and strategic environmental assessments

89 What is a *planning report*?

A *planning report* is a report prepared as prescribed by regulation.

90 Preparation of planning reports

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

Note The Minister may direct the planning and land authority to prepare a planning report under s 60 and s 213 (2).

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

91 What is a *strategic environmental assessment*?

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

Examples of when SEA may be prepared

- 1 major policy initiative
- 2 major plan variation
- 3 urban release program

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

92 Preparation of strategic environmental assessments

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

Note The Minister may direct the planning and land authority to prepare a strategic environmental assessment under s 60 (2) (a). The authority is required to prepare an assessment under s 95 (2).

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

93 Minimum content of SEA to be prescribed

A regulation may prescribe what a strategic environmental assessment must or may contain.

Part 5.7 Review of territory plan

94 Consideration of whether review of territory plan necessary

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

Note The planning and land authority must review the territory plan if directed to do so by the Minister (see s 13 (1) (b) and s 12) or if the authority decides the plan should be reviewed (see s 95).

- (2) In deciding whether the territory plan should be reviewed, the planning and land authority must consider whether the territory plan—
- (a) is consistent with the main object of this Act; and
 - (b) is consistent with its main object; and
 - (c) gives effect to its main object in a way that is not inconsistent with the national capital plan; and
 - (d) gives effect to its main object in a way that gives effect to the sustainability principles; and
 - (e) promotes the planning strategy; and
 - (f) meets current community and building industry expectations.
- (3) After the planning and land authority considers whether the territory plan should be reviewed, the authority must prepare a notice stating—
- (a) that the authority has considered whether the plan should be reviewed; and

- (b) the authority's decision on whether the plan should be reviewed; and
 - (c) the date of the authority's decision.
- (4) A notice under subsection (3) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
- (5) To remove any doubt, the planning and land authority need not undertake a review of the territory plan unless—
 - (a) the authority decides a review is necessary (see s 95); or
 - (b) the Minister directs the authority to review the plan (see s 13 (1) (b)).

95 Review of territory plan

- (1) This section applies if the planning and land authority decides under section 94 that the territory plan should be reviewed.
- (2) The planning and land authority must review the territory plan and, for that purpose, must prepare a strategic environmental assessment in relation to the review.

Note Requirements for strategic environmental assessments are dealt with in pt 5.6.
- (3) After reviewing the territory plan, the planning and land authority must prepare a notice stating—
 - (a) that the authority has reviewed the plan; and
 - (b) the authority's findings on the review.
- (4) The planning and land authority must give the notice under subsection (3) to the Minister.

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

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

Part 5.8 Territory plan—miscellaneous

96 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 a variation of the provision, commenced.
- (2) The validity of a provision of the territory plan must not be questioned in any legal proceeding only because—
 - (a) the territory plan variation that inserted or varied the provision was inconsistent with the planning strategy; or
 - (b) a draft plan variation that became the territory plan variation that inserted or varied the provision was inconsistent with the planning strategy; or
 - (c) the provision, or part of it, is or was inconsistent with the planning strategy.

Chapter 6 Planning strategy

97 Planning strategy

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

98 Public availability of planning strategy

The planning strategy is a notifiable instrument.

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

99 Main object of planning strategy

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

100 Relationship with territory plan

- (1) The planning strategy may be used to develop the statement of strategic directions in the territory plan.
- (2) The planning strategy is not part of, and does not affect, the territory plan.

101 Consideration of planning strategy

- (1) The planning strategy must be considered by—
 - (a) the planning and land authority under section 59 and section 94 (2) (e); and
 - (b) the Minister under section 73; and
 - (c) the Executive under section 102.
- (2) The planning strategy is not a relevant consideration by the planning and land authority, the Minister or another entity, except as provided by subsection (1).
- (3) Without limiting subsection (2), the planning strategy is not a relevant consideration for a decision under the following provisions:
 - (a) chapter 7 (Development approvals);
 - (b) chapter 8 (Environmental impact statements and inquiries);
 - (c) chapter 9 (Leases and licences);
 - (d) chapter 10 (Management of public land);
 - (e) chapter 11 (Compliance).
- (4) The planning strategy must not be considered by—
 - (a) the planning and land authority, the Minister or any other entity, except as provided under subsection (1); or
 - (b) a court in a proceeding on a decision made by the Minister, the planning and land authority or any other entity.
- (5) In this section:

court includes a tribunal, authority or person with power to require the production of documents or the answering of questions.

102 Consideration of whether review of planning strategy necessary

- (1) The Executive must, at least once every 5 years, consider whether the planning strategy should be reviewed.
- (2) In deciding whether the planning strategy should be reviewed, the Executive must consider whether the planning strategy is consistent with its main object.

Note For the main object of the planning strategy, see s 99.

- (3) After the Executive considers whether the planning strategy should be reviewed, the Executive must prepare a notice stating—
 - (a) that the Executive has considered whether the planning strategy should be reviewed; and
 - (b) the Executive's decision on whether the planning strategy should be reviewed; and
 - (c) the date of the Executive's decision.
- (4) A notice under subsection (3) is a notifiable instrument.

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

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

103 If review of planning strategy necessary

If the Executive decides under section 102 that the planning strategy should be reviewed, the Executive must arrange for the planning strategy to be reviewed.

Chapter 7 Development approvals

Part 7.1 Outline

104 Outline—ch 7

- (1) This chapter describes the assessment tracks that are to be followed for assessment of different kinds of development proposals.
- (2) The assessment tracks are as follows:
 - (a) ***code track*** (for development proposals that can be assessed using code requirements in the code that applies to the proposals without considering any merit criteria or anything else in the territory plan);

Examples of possible code track proposals

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

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

- (b) ***merit track*** (for development proposals that can be assessed using the code requirements and merit criteria in the code that applies to the proposals without considering anything else in the territory plan);

Examples of possible merit track proposals

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

- (c) ***impact track*** (for development proposals that can be assessed using the code requirements and merit criteria in the code that applies to the proposals and the statement of strategic directions).

Examples of possible impact track proposals

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

- (3) This chapter also sets out—

- (a) when a development proposal (an ***exempt proposal***) may proceed without development approval; and
- (b) when a development proposal (a ***prohibited proposal***) must not be proceeded with.

Examples of possible exempt proposals

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

Examples of possible prohibited proposals

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

Part 7.2 Assessment tracks for development applications

Division 7.2.1 Operation of assessment tracks generally

105 Relationship between development proposals and development applications

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

106 Application of assessment tracks to development proposals

- (1) The development table sets out the criteria to allow the assessment track for a development application for a development proposal to be worked out.
- (2) If a development proposal is in an assessment track, the proposal must be assessed in that assessment track unless—
 - (a) a Minister makes a declaration under section 116 (Minister may declare impact track applicable) in relation to the proposal; or

- (b) section 117 (Public Health Minister may make declaration affecting assessment track) applies the impact track to the development; or
- (c) the Minister decides to consider the development application for the proposal under division 7.3.5 (Ministerial call-in power for development applications).

107 Application of inconsistent relevant code requirements

- (1) This section applies in relation to an application for development approval for a development proposal if—
 - (a) 2 or more codes apply to the proposal; and
 - (b) the relevant code requirements for the proposal are inconsistent.
- (2) If the relevant code requirements of a precinct code and either a development code or a general code are inconsistent, the relevant code requirements of the precinct code apply to the development proposal and not the relevant code requirements of the development code or general code, to the extent of the inconsistency.
- (3) If the relevant code requirements of a development code and a general code are inconsistent, the relevant code requirements of the development code apply to the development proposal and not the relevant code requirements of the general code, to the extent of the inconsistency.
- (4) If the relevant code requirements of 2 or more precinct codes, development codes or general codes are inconsistent, the relevant code requirements of the more recent code apply to the development approval and not the relevant code requirements of the earlier code, to the extent of the inconsistency.

- (5) To remove any doubt, a relevant code requirement is not inconsistent with the code requirements of another code only because one code deals with a matter and the other does not.

Division 7.2.2 Code track

108 Code track—when development approval must be given

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

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

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

Note 2 **Relevant code requirements**—see dict.

Note 3 If a form is approved under s 379 for this provision, the form must be used.

109 Code track—no public notification, limited right of review, no governmental consultation

To remove any doubt—

- (a) there is no requirement to publicly notify a development proposal in the code track applies; and
- (b) there is only a right of review under chapter 12 for a decision in relation to a development proposal in the code track by the applicant if the development application for the proposal is approved subject to a condition; and
- (c) there is no referral under division 7.3.3 (Referral of development applications) of a development application for a development proposal in the code track.

110 Code track—time for decision on application

A development application for a development proposal in the code track must be decided under section 148 (Deciding development applications) not later than 20 working days after the day the application is made to the planning and land authority.

Division 7.2.3 Merit track

111 Merit track—when development approval must not be given

- (1) Development approval must not be given for a development proposal in the merit track unless the proposal is consistent with—
- (a) the relevant code, including the merit criteria; and
 - (b) if the proposed development relates to land comprised in a rural lease—any land management agreement for the land; and
 - (c) if the proposed development will affect a registered tree or declared site—the advice of the conservator of flora and fauna in relation to the proposal.

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

Note 2 If a form is approved under s 379 for this provision, the form must be used.

Note 3 **Relevant code**—see dict.

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

- (a) the following have been considered:
- (i) any applicable guidelines;
 - (ii) any realistic alternative to the proposed development, or relevant aspects of it; and
- (b) the decision is consistent with the objects of the territory plan.

Note 1 Other criteria may also apply (see, for example, s 119).

Note 2 An application for a proposal in the code track cannot be referred (see s 109 (c)).

- (3) To remove any doubt, if an proposed development will affect a registered tree or declared site—
- (a) the person deciding the development application for the proposed development must not approve the application unless the approval is consistent with the advice of the conservator of flora and fauna in relation to the proposal; and
 - (b) subsection (2) does not apply in relation to the conservator's advice.

112 Merit track—considerations when deciding development approval

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

- (a) the policy objectives for the zone in which the development is proposed to happen;
- (b) the suitability of the land where the development is proposed to take place for a development of the kind proposed;
- (c) each representation received by the authority in relation to the application that has not been withdrawn;
- (d) if an entity gave advice on the application in accordance with section 138 (Requirement to give advice in relation to development applications)—the entity's advice;

Note Advice on an application is given in accordance with section 138 if the advice is given by an entity not later than 15 working days (or shorter prescribed period) after the day the application is given to the entity.

- (e) if the proposed development relates to land that is public land—the plan of management for the land;
- (f) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts on the natural and built environments.

113 Merit track—public notification and right of review for merit track

If a development proposal is in the merit track, the application for development approval for the proposal must be publicly notified under division 7.3.4 and there may be a right of review under chapter 12 in relation to a decision on the application.

114 Merit track—time for decision on application

A development application for a development proposal in the merit track must be decided under section 148 (Deciding development applications) not later than—

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

Division 7.2.4 Impact track

115 Impact track applicability

The impact track applies to a development proposal if—

- (a) the relevant development table states that the impact track applies; or
- (b) the proposal is of a kind mentioned in schedule 4; or
- (c) the Minister makes a declaration under section 116 in relation to the proposal; or

- (d) section 117 (Public Health Minister may make declaration affecting assessment track) or section 123 (Impact track applicable to development proposals not otherwise provided for) provides that the impact track applies to the proposal.

116 Minister may declare impact track applicable

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

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

Note The Minister may publish guidelines about how the Minister will exercise power under this section (see s 375).

117 Public Health Minister may make declaration affecting assessment track

- (1) This section applies if—
 - (a) the Minister responsible for the *Public Health Act 1997*, section 134 (Development approvals under Planning and Development Act, s 117) makes a declaration for this section in relation to a development application for a development proposal; and
 - (b) the application is publicly notified; and
 - (c) the declaration is made during the public consultation period for the application.

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

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

118 Impact track—development applications

A development application for a development proposal in the impact track must include an EIS in relation to the proposal.

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

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

119 Impact track—when development approval must not be given

- (1) Development approval must not be given for a development application for a development proposal in the impact track unless—
- (a) an EIS has been prepared for the proposal; and
 - (b) the proposal is consistent with—
 - (i) the statement of strategic directions; and
 - (ii) the relevant code, including the merit criteria; and
 - (iii) if the proposed development relates to land comprised in a rural lease—any land management agreement for the land; and
 - (iv) if the proposed development will affect a registered tree or declared site—the advice of the conservator of flora and fauna in relation to the application.

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

Note 2 If a form is approved under s 379 for this provision, the form must be used.

Note 3 Requirements for an EIS are dealt with in pt 8.2.

- (2) Also, development approval must not be given for a development proposal in the impact track if approval would be inconsistent with any advice given by an entity to which the application was referred under division 7.3.3 unless the person approving the application is satisfied that—
- (a) the following have been considered:
 - (i) any applicable guidelines;

- (ii) all reasonable development options and design solutions;
- (iii) any realistic alternative to the proposed development, or relevant aspects of it; and

(b) the decision is consistent with the objects of the territory plan.

Note 1 Other criteria may also apply (see, for example, s 111).

Note 2 An application for a proposal in the code track cannot be referred (see s 109 (c)).

- (3) To remove any doubt, if an proposed development will affect a registered tree or declared site—
- (a) the person deciding the development application for the proposed development must not approve the application unless the approval is consistent with the advice of the conservator of flora and fauna in relation to the proposal; and
 - (b) subsection (2) does not apply in relation to the conservator's advice.

120 Impact track—considerations when deciding development approval

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

- (a) the policy objectives for the zone in which the development is proposed to take place;
- (b) the suitability of the land where the development is proposed to take place for a development of the kind proposed;
- (c) each representation received by the authority in relation to the application that has not been withdrawn;

- (d) if an entity gave advice on the application in accordance with section 138 (Requirement to give advice in relation to development applications)—the entity's advice;

Note Advice on an application is given in accordance with section 138 if the advice is given by an entity not later than 15 working days (or shorter prescribed period) after the day the application is given to the entity.

- (e) if the proposed development relates to land that is public land—the plan of management for the land;
- (f) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts on the natural and built environments;
- (g) any EIS for the proposed development;
- (h) the conclusions of any inquiry about an EIS for the proposed development under chapter 8 (Environmental impact statements and inquiries).

121 Impact track—public notification and third-party appeals

If a development proposal is in the impact track, the application for development approval for the proposal must be publicly notified under division 7.3.4 and there are third party appeal rights in relation to a decision on the application.

122 Impact track—time for decision on application

A development application in relation to a development proposal in the impact track applies must be decided under section 148 (Deciding development applications) not later than—

- (a) if an EIS was completed in relation to the proposal before the application was made—
 - (i) if no representation is made in relation to the proposal—30 working days after the day the application is made to the planning and land authority; or
 - (ii) in any other case—45 working days after the day the application is made to the planning and land authority; or
- (b) in any other case—the time prescribed by regulation for this section.

Division 7.2.5 Development proposals not in development table and not exempted

123 Impact track applicable to development proposals not otherwise provided for

- (1) In this section:
development proposal means a development proposal if—
 - (a) the relevant development table for the proposal does not state—
 - (i) which assessment track applies to the proposal; or
 - (ii) that the proposal is exempt from requiring development approval or is prohibited; and
 - (b) the proposal is not exempted from requiring development approval under the relevant development proposal or by regulation.
- (2) The impact track applies to the development proposal.

Division 7.2.6 Exempt development proposals and prohibited developments

124 Exempt development proposals

- (1) If a development proposal is exempt from requiring development approval, the proposal may be proceeded without a development application and development approval.

Note 1 The development proposal may still need a building approval under the *Building Act 2004*.

- (2) A development proposal is exempt from requiring development approval if—
- (a) the proposal is exempt under the relevant development table; or
 - (b) the proposal is exempted by regulation.

125 Continuing use lawfully commenced

- (1) Continuing use of land, or a building or structure on land, is exempt from requiring development approval—
- (a) if the use—
 - (i) when it began, was authorised by a development approval or exempted from requiring development approval in a development table or by regulation; and
 - (ii) is authorised by—
 - (A) a lease for the land; or
 - (B) section 215 (Use of land for leased purpose); or

- (b) if—
 - (i) beginning the use, when it began, was exempted under this Act from requiring development approval; and
 - (ii) the use is authorised by—
 - (A) a lease for the land; or
 - (B) section 215.
- (2) However, subsection (1) does not authorise the erection, alteration or demolition of a building or structure on land, or the carrying out of earthworks or other construction work on land without development approval if, apart from subsection (1), development approval would be required for the erection, alteration, demolition or other work.
- (3) Also, subsection (1) does not authorise an increase in the use made of a building, structure or land if—
 - (a) the use is authorised in relation to a smaller area; and
 - (b) the increase in the area of use happened after commencement day, or partly after commencement day; and
 - (c) the increase in use would require development approval apart from subsection (1).
- (4) Subsection (1) does not authorise the continuation of a use if continuing the use would contravene a requirement of an order, direction, notice or injunction under chapter 11 (Compliance).

126 Development proposals for prohibited development

- (1) If a development proposal is prohibited, either under the relevant development table or under subsection (2), a person cannot apply for approval of the development proposal.

Note 1 A development proposal is prohibited if any part of the development is prohibited (see dict, def *prohibited*).

Note 2 It is an offence to undertake prohibited development (see s 180).

- (2) A development proposal by an entity other than the Territory or a territory authority in a future urban area is prohibited unless the structure plan for the area expressly states otherwise.

Part 7.3 Development applications

Division 7.3.1 Pre-application advice on development proposals

127 Consideration of development proposals

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

Example of when authority might not consider development proposal

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

Note 1 A fee may be determined under s 378 for this provision.

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

- (2) The planning and land authority must, after considering the development proposal, tell the person, in writing, the following in relation to the proposal:
- (a) which assessment track is likely to apply to the proposal, or if the proposal is likely to be exempt or prohibited;
 - (b) whether public notification under division 7.3.4 will be required for the application;
 - (c) whether the development proposed is consistent with existing lease conditions applying to the land where the development is proposed to take place;
 - (d) whether the application will be referred under division 7.3.3 (Referral of development applications);

- (e) generally, what further information may be required.
- (3) The planning and land authority's advice on a proposed development application after consideration is intended to guide and assist the applicant in making the development application.
- (4) However, the planning and land authority may act inconsistently with advice under this section in relation to a development proposal if, in all the circumstances, the authority considers that it is appropriate to do so.

Examples of when it might be appropriate to act inconsistently with advice

- 1 if a matter relevant to the proposal changes
 - 2 if new information that changes the probable impact or effect of the proposal is brought to the attention of the planning and land authority
- (5) Advice given under this section expires 6 months after the day it is given.

Division 7.3.2 Requirements for development applications

128 Form of development applications

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

Note If a form is approved under s 379 for this provision, the form must be used.

- (b) if the application is made by someone other than the lessee of the area of land to which the application relates—also be signed by—
 - (i) if the area of land to which the application relates is subject to a lease—the lessee of the area; or
 - (ii) if the area of land to which the application relates is public land or unleased land—the custodian for the land; or
 - (iii) in any other case—the planning and land authority; and
- (c) if the application is for approval of a development in the code track—be accompanied by information or documents addressing the relevant code requirements; and
- (d) if the application is for approval of a development in the merit track—be accompanied by—
 - (i) information or documents addressing the relevant code requirements; and
 - (ii) an assessment of the possible environmental effects of the development in detail that is adequate taking into consideration the size and significance of the impact of the development on the environment; and
- (e) if the application is for approval of a development in the impact track—be accompanied by—
 - (i) information or documents addressing the relevant code requirements; and
 - (ii) the EIS prepared for the proposal (see s 119 (1) (a)); and

- (f) if the application is for approval of a development that is a lease variation to pay out land rent for land—state the greatest of the following amounts:
 - (i) the current site value of the land;
 - (ii) if the land was purchased at auction—the reserve price of the land at the auction;
 - (iii) if the land was granted by direct grant—the value of the land when originally granted; and
- (g) if the application is for approval of a development prescribed by regulation for this paragraph—an assessment prepared using criteria provided by 1 or more of the entities to which the application is required to be referred under division 7.3.3; and
- (h) if the application is for approval of a development that requires construction work to be carried out on land that has previously been developed and is not leased for rural purposes—be accompanied by a survey certificate for the land where the development is to be carried out; and
- (i) if the application is for development to which section 182 (Development applications for developments undertaken without approval) applies—be accompanied by a plan of the development prepared by a registered surveyor that sets out the dimensions of the development.

Note 1 A development application in the impact track must usually include an EIS (see s 119).

Note 2 A development application for a development proposal to which division 7.2.5 applies must include an EIS (see s 119 and div 7.2.4).

Note 3 A development application for a development proposal may be made electronically (see the *Electronic Transactions Act 2001*).

- (3) A person who signs an application under subsection (2) (b) (i) is taken to be an applicant in relation to the application.

- (4) In this section:

current site value, of a lease, means the market value of the lease on the day proposed for pay out of the lease if—

- (a) the lease were offered for sale subject to the existing conditions on the lease; and
- (b) the lease had its full term; and
- (c) the rent payable for the lease were nominal rent; and
- (d) the value of the lease were not affected by an proposed variation of the lease.

market value, of a lease—see section 201.

survey certificate, for land where development is to be carried out, means a certificate prepared by a registered surveyor that shows—

- (a) the boundaries of the land; and
- (b) the location of each building or structure on the land; and
- (c) the existing contours of the land.

129 Effect of approvals in development applications

- (1) This section applies if—
- (a) a relevant code requirement for a development proposal is that an entity approves the development or certifies something in relation to the development; and
 - (b) the entity approves the development, or certifies something in relation to the development, in writing; and

- (c) the development application is approved (by way of a development approval).
- (2) The entity must not act inconsistently with the development approval unless—
 - (a) further information in relation to the development proposed in the application comes to the entity's attention (other than information mentioned in subsection (3)); and
 - (b) the entity did not have the further information when the entity approved the development or certified the thing; and
 - (c) the further information is relevant to the approval of, or certification in relation to, the development; and
 - (d) if the entity had had the further information when the entity considered the development, the entity would not have approved the development or certified the thing.
- (3) Subsection (2) (a) does not apply to further information in relation to a development proposed in an application if—
 - (a) the information was not required in the development application; and
 - (b) the information is required by the entity after the application is approved; and
 - (c) the information is consistent in all significant respects with information already provided by the applicant, except that it is more detailed.
- (4) For this section, an entity *acts inconsistently* with a development approval if the entity—
 - (a) does not issue or give an approval or other thing required for the development; or

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

Example of advice

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

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

- (5) Also for this section, an entity *acts inconsistently* with a development approval if—
 - (a) the approval, or a certificate in writing by the entity in relation to the development, states that an activity to which the approval relates does not require a particular authorisation (however described); and
 - (b) the entity prosecutes someone, or takes other compliance action, in relation to the activity because the activity is carried out without the particular authorisation.

130 Authority may require further information—development applications

- (1) The planning and land authority may, by written notice, ask an applicant for development approval to give the authority stated further information in relation to a development application.
- (2) The request must—
 - (a) state the period within which the further information asked for must be provided; and

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

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

- (3) The period stated under subsection (2) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.
- (4) The planning and land authority may, on application before the end of the period stated under subsection (2) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

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

131 Effect of failure to provide further information— development applications

- (1) This section applies if—
- (a) the planning and land authority has asked for further information under section 129(5) in relation to an application; and
 - (b) the applicant has not provided some or all of the information in accordance with the request.
- (2) The planning and land authority may refuse the application under section 148.

132 Correcting development applications

- (1) The planning and land authority may, on the authority's own initiative or on application, correct a formal error in a development application.

- (2) If the planning and land authority corrects a development application, the authority must give the applicant, or if there is more than 1, each applicant, written notice about the correction.
- (3) However, the planning and land authority must not make a correction if making the correction would adversely affect someone other than the applicant.

133 Amending development applications

- (1) The planning and land authority may, if asked by the applicant, amend a development application.

Note If a form is approved under s 379 for this provision, the form must be used.

- (2) However, the planning and land authority must not amend the development application unless—
 - (a) satisfied that the development applied for after the amendment will be substantially the same as the development applied for originally; and
 - (b) satisfied that the assessment track for the application will not change if the application is amended.
- (3) If the planning and land authority amends the development application, the authority must give the applicant written notice of the decision to amend.

134 Referred development application amended

- (1) This section applies if—
 - (a) a development application has been amended under section 133; and

(b) before it was amended, the application was referred to an entity under division 7.3.3.

- (2) The planning and land authority must refer the development application to the entity.

Note Section 138 sets out what the entity to which the application is referred must do with the application.

- (3) A referral under subsection (2) must include a brief description of how the application has been amended since the entity last saw it.
- (4) However, if the planning and land authority is satisfied that the proposed amendment of the application does not affect any part of the application in relation to which the entity to which the application was referred made a comment, the authority need not refer the proposed amendment to the entity.

135 Notice of amended development applications

- (1) If the planning and land authority amends a development application, the authority must—
- (a) tell the applicant, or if there is more than 1, each applicant, about the amendment; and
 - (b) if public notice of the making of the application has been given—publicly notify the amended application under division 7.3.4 (Public notification of development applications and representations).
- (2) However, the planning and land authority may waive the requirement to publicly notify the amended application for development approval if satisfied that—
- (a) no-one other than the applicant will be adversely affected by the amendment; and

- (b) the environmental impact caused by the approval of the amendment will do no more than minimally increase the environmental impact of the development.

136 Withdrawal of development applications

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

Division 7.3.3 Referral of development applications

137 Some development applications to be referred

- (1) The planning and land authority must refer a development application prescribed by regulation to an entity prescribed by regulation.
- (2) However, the planning and land authority must 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 in relation to the application not earlier than 6 months before the day the application is made; and
 - (b) the entity agrees in writing to the proposed development.

Note If a form is approved under s 379 for this provision, the form must be used.

- (3) A written agreement to a proposed development mentioned in subsection (2) (b) is taken to be advice received in accordance with section 138 in relation to an application for development approval for the development.

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

138 Requirement to give advice in relation to development applications

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

Note An amended application may be required to be referred to an entity under s 134.

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

Note 1 A written agreement to a development proposal under section 137 (2) (b) is taken to be advice given in accordance with this section in relation to a development application for the proposal (see s 137 (3)).

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

139 Effect of advice by referral entity

- (1) This section applies if—
- (a) a development application, including a development application amended under section 133, is referred to an entity; and
 - (b) the entity gives advice on the application in accordance with section 138; and
- Note* Advice on an application is given in accordance with section 138 if the advice is given by an entity not later than 15 working days (or shorter prescribed period) after the day the application is given to the entity.
- (c) the planning and land authority or Minister approves the application consistently with the advice.
- (2) The entity must not act inconsistently with the advice in relation to the development application unless—
- (a) further information in relation to the development proposed in the application comes to the entity's attention (other than information mentioned in subsection (3)); and
 - (b) the entity did not have the further information when the entity gave the advice; and
 - (c) the further information is relevant to the advice the entity gave; and
 - (d) if the entity had had the further information when the entity gave the advice, the entity would have given different advice.

- (3) Subsection (2) (a) does not apply to further information in relation to a development proposed in an application if—
- (a) the information was not required in the development application; and
 - (b) the information is required by the entity after the application is approved; and
 - (c) the information is consistent in all significant respects with information already provided by the applicant, except that it is more detailed.
- (4) For this section, an entity *acts inconsistently* with advice in relation to a development application if—
- (a) the advice is that the entity will issue or give an approval or other thing in relation to the development; and
 - (b) the application is approved; and
 - (c) the entity—
 - (i) does not issue or give the approval or other thing consistently with the advice; or
 - (ii) issues or gives the approval or other thing in a way, or subject to a condition, that prevents the applicant undertaking the development approved.

Example of advice

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

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

- (5) Also for this section, an entity *acts inconsistently* with advice in relation to an application if—
- (a) the advice is that an activity to which the application relates does not require a particular authorisation (however described); and
 - (b) the entity prosecutes someone, or takes other compliance action, in relation to the activity because the activity is carried out without the particular authorisation.

Example of acting inconsistently

An Act prohibits activity A without an approval. The entity responsible for administering the Act gives advice under section 138 that the activity (activity B) in the application does not fall within the description of activity A. The application is approved consistently with the advice. The entity cannot prosecute a person for carrying out activity B in accordance with the approved application because activity B does fall within the description of activity A and the person did not have approval.

- (6) For this section, if an entity fails to provide advice in accordance with section 138 (Requirement to give advice in relation to development applications) in relation to a development application referred to the entity—
- (a) the entity is taken to have given advice that the entity supports the application; and
 - (b) the entity acts inconsistently with the advice if the entity—
 - (i) refuses to do something required to be done by the entity to allow the applicant to undertake the development approved in the application; or
 - (ii) does something in a way, or subject to a condition, that prevents the applicant from undertaking the development approved in the application.

Division 7.3.4 Public notification of development applications and representations

140 What is *publicly notifies* for ch 7?

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

- (a) for an application for a development proposal in the merit track other than a proposal to which paragraph (b) applies—the authority notifies the application under section 141; or
- (b) for an application for a development proposal in the impact track or an application for a development proposal in the merit track that is prescribed by regulation for this paragraph—the authority notifies the application under section 141 and section 142.

Note 1 Only developments to which the merit track and impact track applies are required to be publicly notified (see s 112(f) and s 121). Also, the planning and land authority must re-notify some amended development applications (see s 135).

Note 2 A person other than an applicant may apply for review of a decision to approve a development application in the merit track only if the application is required to be notified under section 142 (see sch 1, item 3).

141 Public notice to adjoining premises

- (1) This section applies in relation to a development application if—
 - (a) the planning and land authority must notify the application under this section; and

(b) a place (the *adjoining place*) other than unleased land adjoins the place (the *developing place*) to which the application relates.

- (2) If the adjoining place is occupied, the planning and land authority must give written notice of the making of the development application to the registered proprietor of the lease of the adjoining place at the adjoining place.

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

- (3) If the adjoining place is unoccupied, the planning and land authority must give written notice of the making of the development application to the lessee of the adjoining place at the lessee's last-known address.

- (4) However, the planning and land authority need not give public notice under subsection (2) or (3)—

(a) if, in the authority's opinion, it would be impractical to give notice by post to the lessee of each adjoining place because of the number of adjoining places; or

(b) in relation to an adjoining place that is leased by the applicant or a person for whom the applicant has been appointed to act as agent.

Note This section is subject to s 372. Also, a regulation may exempt a development application from the requirement for notification under this section.

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

- (6) In this section:

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

registered proprietor—see section 201.

142 Major public notification

- (1) If the planning and land authority must notify a development application under this section, the authority must do each of the following:
- (a) display a sign on the place to which the application relates that states the development proposed to be undertaken;
 - (b) publish notice of the making of the application in a daily newspaper.

Note This section is subject to section 372. Also, a regulation may exempt a development application from the requirement for notification under this section.

- (2) A person commits an offence if—
- (a) a sign is displayed under subsection (1) (a); and
 - (b) the person moves, alters, damages, defaces, covers or prevents access to the sign while it is required to be displayed.

Maximum penalty: 5 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) Subsection (2) does not apply to a person if the person acts with the written approval of the chief planning executive.

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

143 Representations about development applications

- (1) Anyone may make a representation about a development application that has been publicly notified under this Act.

Note 1 If a form is approved under s 379 for this provision, the form must be used.

Note 2 Only developments in the merit track and impact track are required to be publicly notified (see s 113 and s 121). Also, the planning and land authority must re-notify some amended development applications (see s 135).

- (2) A representation about a development application must be made during the public consultation period for the application.
- (3) The planning and land authority may, by notice published in a daily newspaper, extend the public consultation period.

Note The planning and land authority may extend the public consultation period after it has ended (see Legislation Act, s 151C).

- (4) A person who makes a representation about a development application may, in writing, withdraw the representation at any time before the application is decided.
- (5) In this section:

public consultation period means—

- (a) the period prescribed by regulation for this section; or
- (b) if the period prescribed is extended under subsection (3), the prescribed period as extended.

Division 7.3.5 Ministerial call-in power for development applications

144 Direction that development applications be referred to Minister

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

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

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

- (2) If the development application is required to be referred, or has been referred, to an entity under section 137, the planning and land authority must give a copy of the Minister's direction to the entity.
- (3) If the Minister gives a direction under subsection (1) in relation to an application, the planning and land authority must take no further action that would lead to a decision by the authority on the application.
- (4) When complying with the direction under subsection (1), the planning and land authority must also give the Minister—
- (a) the information and documents received by the authority in relation to the application, including any advice given to the authority under division 7.3.3 (Referral of development applications); and
 - (b) any other relevant information and documents held by the authority.

145 Minister may decide to consider development applications

- (1) This section applies in relation to an application referred to the Minister under section 144.
- (2) The Minister may decide to consider the application if, in the Minister's opinion—
 - (a) the application raises a major policy issue; or
 - (b) the application seeks approval for a development that may have a substantial effect on the achievement or development of the object of the territory plan; or
 - (c) the approval or refusal of the application would provide a substantial public benefit.
- (3) If the Minister is satisfied that the Minister should not consider the application, the Minister must refer the application back to the planning and land authority for decision.

146 Minister decides to consider referred development applications

- (1) This section applies if the Minister decides under section 145 to consider an application referred to the Minister.
- (2) The Minister must—
 - (a) tell the planning and land authority about the decision to consider the application; and
 - (b) tell the applicant in writing about the decision and the grounds on which the decision was made; and
 - (c) ensure that the Minister has the comments of the planning and land authority on the application; and

- (d) approve or refuse the application under section 148 (Deciding development applications).
- (3) A notice under subsection (2) (a) is a notifiable instrument.
Note A notifiable instrument must be notified under the Legislation Act.
- (4) A notice under subsection (2) (a) must be notified under the Legislation Act not later than 15 working days after the day it is given.

147 Minister decides referred development applications

- (1) This section applies if the Minister decides an application under section 148.
- (2) Not later than 3 sitting days after the day the Minister decides the application, the Minister must present to the Legislative Assembly a statement containing—
 - (a) a description of the development to which the application relates; and
 - (b) details of the land where the development is proposed to take place; and
 - (c) the applicant's name; and
 - (d) details of the Minister's decision; and
 - (e) the grounds for the decision.

Division 7.3.6 Deciding development applications

148 Deciding development applications

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

- (a) approve a development application; or
- (b) approve a development application subject to a condition; or
- (c) refuse a development application.

Note 1 For provisions about conditions, see s 150. Also, 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 229).

Note 2 The criteria for a decision on an application to vary a lease granted as a concessional lease are in div 9.4.2.

Note 3 Notice of a decision under s (1) must be given under div 7.3.8.

Note 4 An applicant and, in some cases, other people may have a right to apply for review of a decision under s (1) (see ch 12 and sch 1). However, the right to apply for legal review of a decision by the Minister is time-limited (see s 371).

Note 5 If a development application has been referred to an entity under division 7.3.3, the notice of the decision under this section must include information about any comment by the referral entity and whether the authority has followed the entity's advice (see s 157).

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

- (3) If the planning and land authority approves a development application that relates to a regulated tree, the authority may, under this section—
- (a) if a tree management plan is already in force for the tree—approve an amendment of, or replacement for, the tree management plan; or
 - (b) in any other case—approve a tree management plan for the tree.
- (4) In this section:

prescribed time period, for a development application, means—

- (a) the period set out in part 7.2 (Assessment tracks for development applications) for deciding an application for a development proposal in the assessment track that applies to the proposal; or
- (b) if the period mentioned in paragraph (a) is extended under division 7.3.7—the period mentioned in paragraph (a) plus each extension that applies to the application under division 7.3.7.

Note The time for deciding a development application is 20 working days for a proposal in the code track (see s 110), 30 or 45 working days for a proposal in the merit track (see s 114) or different periods for a proposal in the impact track (see s 122).

149 Deemed refusal of development applications

- (1) This section applies if—
- (a) a development application has been made; and
 - (b) the time for deciding the application has ended; and

- (c) neither the planning and land authority nor the Minister has decided the application under section 148.
- (2) The planning and land authority is taken to have refused (the *deemed refusal*) the development application under section 148 (1) (c).
- (3) If a development application is taken to have been refused because of subsection (2), the planning and land authority or, if the Minister has decided to consider the application under division 7.3.5, the Minister, may approve the application under section 148 despite the deemed refusal.
- (4) However, to remove any doubt, the planning and land authority or Minister must not approve the development application if the AAT has finally dealt with the application.

150 Conditional approvals

- (1) This section applies in relation to the conditions subject to which the planning and land authority, or the Minister, may approve a development application under section 148 (1) (b).
- (2) The approval under section 148 (1) (b)—
 - (a) must include any condition that is required to be included by the territory plan; and
 - (b) must not include a condition inconsistent with a condition required to be included by the territory plan.
- (3) Following are examples of the conditions subject to which a development approval in relation to land may be approved, other than an approval for a code track proposal:
 - (a) that a development, or a stated stage of a development, is to be carried out to the satisfaction of a stated entity;

- (b) requiring a development to be carried out in stages within the periods stated in or under the approval;
- (c) stating a period in which a development or any stage of a development is to be carried out;
- (d) that the approval does not take effect unless a stated approval is revoked, amended or given;
- (e) that a lease relating to the land be varied and the variation registered under the *Land Titles Act 1925*;
- (f) that another approval relating to the land be surrendered;
- (g) that stated things be done to prevent or minimise adverse environmental impacts on the natural or built environment;
- (h) if the approval relates to a use—that the land, or buildings or structures on the land, may only be used for the use in stated circumstances;
- (i) in relation to an approval to carry out a development for a stated period—
 - (i) that building works or other works carried out in or on a place the subject of the approval are to be removed at the end of the period; or
 - (ii) that the place where the development is to happen is to be restored to a particular state at the end of the period;
- (j) that a bond be entered into securing performance against the conditions of the approval;
- (k) if the approval is in relation to a place registered, or nominated for provisional registration, under the *Heritage Act 2004*—that the applicant enter into a heritage agreement under that Act for the conservation of the heritage significance of the place;

- (l) that a development be carried out to a stated standard;
- (m) that stated works, services or facilities that the relevant authority considers reasonable in the circumstances—
 - (i) be provided by the applicant on or to a place the subject of the approval, or on or to another place; or
 - (ii) be paid for completely or partly by the applicant; or
 - (iii) be provided on or to a place the subject of the approval by agreement between the applicant and the Minister responsible for the provision of the works, services or facilities;
- (n) that plans, drawings or other documents be prepared by the applicant and lodged with the planning and land authority for approval before the development or a stated part of it starts;
- (o) requiring changes to be made to any plan, drawing or other document forming part of the application for approval;
- (p) that the applicant give the planning and land authority a further assessment by a valuer that complies with section [226 (1) (b)].

LP&E, s 226 (1) (b) not included awaiting outcome of consultancy on change of use.

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

- (4) A code track proposal must not be approved subject to a condition unless the condition is prescribed by regulation for this subsection.

- (5) The planning and land authority may approve an amendment to a plan, drawing or other document approved under subsection (3) (n) if the amendment—
- (a) if made, would not make the approval inconsistent with section 164; and
 - (b) is not inconsistent with an approval under subsection (3) (n).

Division 7.3.7 Extensions of time for deciding development applications

151 Extension of time for further information—further information sufficient

- (1) This section applies to a development application if—
- (a) the planning and land authority gives the applicant a notice (a *request notice*) under section 130 asking for further information in relation to the application; and
 - (b) the request notice is given to the applicant not later than 10 working days after the day the application is lodged; and
 - (c) the authority has not asked for further information by request notice in relation to the application before; and
 - (d) the applicant gives the authority the information required by the request notice before the end of the period stated in the notice, or any extension of the period under section 130 (4).
- (2) The time for deciding the development application under section 148 is extended by a period—
- (a) beginning on the day after the day the planning and land authority gives the applicant the request notice; and

- (b) ending on the day the applicant gives the authority the information required by the request notice.

152 Extension of time for further information—further information insufficient

- (1) This section applies to a development application if—
 - (a) the planning and land authority gives the applicant a notice (a *request notice*) under section 130 asking for further information in relation to the application; and
 - (b) the request notice is given to the applicant not later than 10 working days after the day the application is lodged; and
 - (c) the authority has not asked for further information by request notice in relation to the application before; and
 - (d) the applicant gives the authority information relating to the request notice before the end of the period stated in the request notice, or any extension of the period under section 130 (4); and
 - (e) the authority decides that the information given in relation to the request notice is insufficient and gives the applicant written notice (the *insufficiency notice*) of the decision.
- (2) The time for deciding the development application under section 148 is extended by a period—
 - (a) beginning on the day after the day the planning and land authority gives the applicant the request notice; and
 - (b) ending 20 working days after the day the applicant receives the insufficiency notice.

153 Extension of time for further information—no further information given

- (1) This section applies to a development application if—
 - (a) the planning and land authority gives the applicant a notice (a *request notice*) under section 130 asking for further information in relation to the application; and
 - (b) the request notice is given to the applicant not later than 10 working days after the day the application is lodged; and
 - (c) the authority has not asked for further information by request notice in relation to the application before; and
 - (d) the applicant does not give the authority the information asked for by the request notice before the end of the period stated in the request notice, or any extension of the period under section 130 (4).
- (2) The time for deciding the development application under section 148 is extended by—
 - (a) a period of the same length as the period for giving further information stated in the request notice; or
 - (b) if the period for giving further information stated in the request notice has been extended under section 130 (4)—a period the same length as the period stated in the request notice as extended under section 130 (4).

154 Extension of time—application amended

- (1) This section applies in relation to a development application if the application is amended under section 133.

- (2) The time for deciding the development application under section 148 is extended by the period—
 - (a) beginning on the day the application is made; and
 - (b) ending on the later of the following days:
 - (i) the day the application is amended under section 133;
 - (ii) if the amended application must be publicly notified under division 7.3.4 (see s 135 (1) (b))—the day after the public consultation period for the application ends.
- (3) In this section:
public consultation period—see section 143 (5).

Division 7.3.8 Notice of decisions on development applications

155 Notice of approval of application

- (1) If a development application is approved under section 148 (1) (a) or (b), the planning and land authority must give written notice—
 - (a) to the applicant; and
 - (b) if the application approved relates to a variation of a lease—to the registrar-general for notification under the *Land Titles Act 1925*; and
 - (c) if the application approved relates to beginning a new use of land or a building or structure on the land or a change of use of land or a building or structure on the land—to the registrar-general for notification under the *Land Titles Act 1925*; and

- (d) to each person who made a representation under section 143 about the application.
- (2) A notice to an applicant must state the date the approval takes effect.

Note For date of effect of an approval, see div 7.3.9.
- (3) A notice mentioned under subsection (1) in relation to an approval must—
 - (a) contain the following:
 - (i) a description of the place to which the approval relates;
 - (ii) a brief description of the development to which the approval relates; and
 - (b) set out the decision and the reasons for the approval; and
 - (c) if the approval is subject to conditions—set out the conditions the approval is subject to; and
 - (d) state—
 - (i) the place where, and times when, a copy of the application and the approval may be inspected; and
 - (ii) how application may be made to the AAT for a review of the decision to approve the application.
- (4) A notice under subsection (1) must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

156 Notice of refusal of application

- (1) If a development application is refused under section 148 (1) (c), the planning and land authority must give written notice of the refusal to—
 - (a) the applicant; and
 - (b) each person who made a representation under section 143 about the application.
- (2) However, the planning and land authority need not give notice of the deemed refusal of a development application if the application contains information about deemed refusals and the right to apply for review of a deemed refusal.
- (3) A notice under subsection (1)—
 - (a) must set out the reasons for the decision; and
 - (b) must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (4) In this section:
deemed refusal—see section 149 (2).

157 Notice of decision on referred development application

- (1) This section applies in relation to a development application if—
 - (a) the application is referred to an entity under section 137; and
 - (b) the entity gives the planning and land authority advice in relation to the application; and
 - (c) the authority decides the application under section 148 (Deciding development applications).

- (2) Notice of the decision under section 155 or section 156 must include—
 - (a) a statement about whether the planning and land authority followed the advice of the entity when making the decision; and
 - (b) if the authority did not follow the advice of the entity—why the authority did not follow the advice of the entity.
- (3) However, the planning and land authority need not comply with subsection (2) in relation to an entity's advice on a development application if satisfied on reasonable grounds that the advice is not relevant to the application.

158 Notice if representation by 2 or more people

- (1) This section applies if—
 - (a) a decision has been made under section 148 in relation to a development application; and
 - (b) a representation has been made under section 143 about the application; and
 - (c) 2 or more people made the representation.
- (2) The planning and land authority is taken to have complied with section 155 (1) (d) or section 156 (1) (b) in relation to the representation if the authority gives notice—
 - (a) if 1 person has been nominated as the person to whom notice of the decision is to be given and the person's address has been given to the authority—to the nominated person; or
 - (b) in any other case—to 1 of the people who made the representation.

159 Notice of decision to referral entities

- (1) This section applies if—
 - (a) a decision has been made under section 148 in relation to a development application; and
 - (b) the application was referred to an entity under division 7.3.3.
- (2) The planning and land authority must give a copy of the decision on the development application to each entity to which the application was referred.

Division 7.3.9 Effect and duration of development approvals

160 When development approvals take effect—no representations

- (1) This section applies if—
 - (a) the planning and land authority or Minister approves a development application under section 148; and
 - (b) there are no representations about the application; and
 - (c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to happen; and
 - (d) the approval is not subject to a condition that something must happen before the approval takes effect; and
 - (e) no application has been made under division 7.3.10 for reconsideration of the approval.
- (2) The approval of the development application takes effect on the day after the day the application is approved.

161 When development approvals take effect—single representation

- (1) This section applies if—
 - (a) the planning and land authority or Minister approves a development application under section 148; and
 - (b) a single representation about the application has been made; and
 - (c) no application is made to the AAT for review of the decision to approve the application by the end of the period of 20 working days after the day the person who made the representation was told about the decision; and
 - (d) the development does not include an activity not allowed under the lease for the land on which the development is proposed to happen; and
 - (e) the approval is not subject to a condition that something must happen before the approval takes effect; and
 - (f) no application has been made under division 7.3.10 for reconsideration of the approval.
- (2) The approval of the development application takes effect 20 working days after the day notice of the decision to approve the application is given to the person who made the representation.

162 When development approvals take effect—multiple representations

- (1) This section applies if—
 - (a) the planning and land authority or Minister approves a development application under section 148; and

- (b) 2 or more representations about the application have been made; and
 - (c) no application is made to the AAT for review of the decision to approve the application by the end of the period of 20 working days after the final notice of the decision is given; and
 - (d) the approval is not subject to a condition that something must happen before the approval takes effect; and
 - (e) no application has been made under division 7.3.10 for reconsideration of the approval.
- (2) The approval of the development application takes effect 20 working days after the final notice of the decision to approve the application is given.
- (3) In this section:

final notice, of a decision to approve a development application, means the day when every person who made a representation on the application has been given notice of the decision.

163 When development approvals take effect—AAT review

- (1) This section applies if—
- (a) the planning and land authority or Minister approves a development application under section 148; and
 - (b) 1 or more representations about the application have been made; and
 - (c) application is made to the AAT for review of the decision to approve the application and the tribunal decides to confirm the decision (whether or not a condition is varied, omitted or imposed); and

- (d) the development does not include an activity not allowed under the lease for the land on which the development is proposed to happen; and
 - (e) the approval is not subject to a condition that something must happen before the approval takes effect; and
 - (f) no application has been made under division 7.3.10 for reconsideration of the approval.
- (2) The approval of the development application takes effect on the day the AAT makes its decision.

164 When development approval takes effect—activity not allowed by lease

- (1) This section applies if—
- (a) the planning and land authority or Minister approves a development application under section 148; and
 - (b) the development includes an activity not allowed by a lease of the land where the activity is to be carried out; and
 - (c) the approval is not subject to a condition that something must happen before the approval takes effect; and
 - (d) no application has been made under division 7.3.10 for reconsideration of the approval.
- (2) The approval of the development application takes effect on the latest of the following days:
- (a) the day the approval would take effect under this division if the development did not include an activity not allowed by a lease of the land where the activity is to be carried out;

- (b) the day the variation of the lease to allow the activity takes effect;
 - (c) if an application for review has been made in relation to the approval—the day after the day—
 - (i) the approval is confirmed by the AAT (whether completely or partly); or
 - (ii) the application for review is withdrawn.
- (3) For this section, the variation of the lease is taken to take effect on the day the planning and land authority is told by the registrar-general that the variation has been registered under the *Land Titles Act 1925*.

165 When development approval takes effect—condition to be met

- (1) This section applies if—
 - (a) the planning and land authority or Minister approves a development application under section 148; and
 - (b) the development does not include an activity not allowed by a lease of the land where the activity is to be carried out; and
 - (c) the approval is subject to a condition that something must happen before the approval takes effect; and
 - (d) no application has been made under division 7.3.10 for reconsideration of the approval.

- (2) The approval of the development application takes effect on the latest of the following days:
- (a) the day the approval would take effect under this division if the approval were not subject to a condition that something must happen before the approval takes effect;
 - (b) the day the condition is complied with;
 - (c) if an application for review has been made in relation to the approval—the day after the day—
 - (i) the approval is confirmed by the AAT (whether completely or partly); or
 - (ii) the application for review is withdrawn.

166 When development approval takes effect—activity not allowed by lease and condition to be met

- (1) This section applies if—
- (a) the planning and land authority or Minister approves a development application under section 148; and
 - (b) the development includes an activity not allowed by a lease of the land where the activity is to be carried out; and
 - (c) the approval is subject to a condition that something must happen before the approval takes effect; and
 - (d) no application has been made under division 7.3.10 for reconsideration of the approval.

- (2) The approval of the development application takes effect on the latest of the following days:
 - (a) the day the approval would take effect under section 164 if the approval were not subject to a condition that something must happen before the approval takes effect;
 - (b) the day the approval would take effect under section 165 if the development did not include an activity not allowed by a lease of the land where the activity is to be carried out.

167 When development approval takes effect—reconsideration

- (1) This section applies if—
 - (a) the planning and land authority or Minister approves a development application under section 148; and
 - (b) application is made for reconsideration under section 173 of the decision to approve the development application.
- (2) The approval of the development application takes effect on the latest of the following days:
 - (a) the day the approval would take effect under this division if there were no application for reconsideration;
 - (b) the day the approval is confirmed (whether completely or partly).

168 End of development approvals other than lease variations

- (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 beginning a new use or a change of use.
- (2) A development approval to which this section applies ends if—
- (a) the development or any stage of the development has not started by the end of the period stated in the approval; or
 - (b) the development or any stage of the development has not finished by the end of the period stated in the approval; or
 - (c) if no period is stated in the approval for starting the development or any stage of the development and the planning and land authority does not give notice under subsection (4) in relation to the approval—the development or stage of development has not started 2 years after the day the approval takes effect; or
 - (d) the approval holder surrenders the approval to the planning and land authority; or
 - (e) if no time is stated in the approval for finishing the development—the development is not finished—
 - (i) 2 years after the day the development begins; or
 - (ii) if an extension of the 2-year period is granted under subsection (3)—at the end of the extended period; or

- (f) for a development other than a development in relation to which the authority has given notice under subsection (4)—if the development approval relates to land comprised in a lease that requires the development to be completed on a stated date—the date stated in the lease for completion of the development; or
- (g) the approval is revoked under section 171.

Note For when an approval takes effect, see div 7.3.9.

- (3) On application made before the end of a prescribed period, the planning and land authority may extend the prescribed period.
- (4) In this section:

prescribed period, in relation to a development approval, means—

- (a) the time stated in the approval for finishing the development or a stage of the development; or
- (b) if no time is stated in the approval for finishing the development—the period ending 2 years after the development begins.

169 End of development approvals for lease variations

- (1) This section applies to—
 - (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.
- (2) The development approval, or part of the approval, ends if—
 - (a) the lease is varied in accordance with the approval; or

- (b) the lease is terminated; or
- (c) the approval is revoked under section 171; or
- (d) the approval holder surrenders the approval to the planning and land authority; or
- (e) the lease expires.

170 End of development approvals for beginning use and change of use without lease variation

- (1) This section applies to a development approval, or part of a development approval, that—
 - (a) consists only of beginning a new use or changing a use; and
 - (b) does not require a lease variation.
- (2) The development approval ends if—
 - (a) the use is begun in accordance with the approval; or
 - (b) the lease expires; or
 - (c) the approval is revoked under section 171; or
 - (d) for an approval which includes a condition about the exercise of the use—
 - (i) the period stated for the approval ends; or
 - (ii) the approval holder surrenders the approval to the planning and land authority.
- (3) If use in accordance with the development approval does not begin before the end of the period of 2 years beginning on the day after the day the approval is given, the development approval ends at the end of the 2-year period.

- (4) The planning and land authority must tell the registrar-general about the ending of a development approval to which this section applies if—
- (a) the authority gave the registrar-general notice of the approval; and
 - (b) the approval is surrendered to the authority.

171 Revocation of development approvals

- (1) The planning and land authority may revoke a development approval if—
- (a) satisfied that the approval was obtained by fraud or misrepresentation; or
 - (b) if the approval is in relation to a place registered, or nominated for provisional registration, under the *Heritage Act 2004*—the applicant is convicted of an offence against this part or the *Heritage Act 2004*.
- (2) The planning and land authority must tell the registrar-general about the revocation of the development approval if the authority gave the registrar-general notice of the approval.

Division 7.3.10 Reconsideration of development applications for approval

172 Definitions—div 7.3.10

In this division:

new application—see section 173 (2).

original application—see section 173 (1) (a).

original decision—see section 173 (1) (a).

173 Applications for reconsideration

- (1) This section applies if—
 - (a) a development application, or an application for amendment of a development approval, (the *original application*) has been approved subject to a condition or refused (the *original decision*) by the planning and land authority; and
 - (b) an application has not previously been made under this section for reconsideration of the original decision.
- (2) The applicant for the original application may apply (the *new application*) for reconsideration of the original decision.

Note A fee may be determined under s 378 for this provision.

- (3) The new application must be made not later than—
 - (a) 20 working days after the day the applicant is told about the original decision by the planning and land authority; or
 - (b) any longer period allowed by the planning and land authority.

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

- (4) The application must set out the grounds on which reconsideration of the original decision is sought.

Note Making an application under this section stays the operation of the decision for which reconsideration is sought.

174 Reconsideration of decisions

- (1) Not later than 20 working days after the day the planning and land authority receives the new application, the authority must—

- (a) reconsider the original decision; and
 - (b) after reconsideration—
 - (i) make any decision in substitution for the original decision that the authority could have made on the original application; or
 - (ii) confirm the original decision.
- (2) The 20 working days mentioned in subsection (1) may be extended for a stated period by agreement between the planning and land authority and the applicant.
- (3) In reconsidering the original decision, the planning and land authority—
 - (a) need not publicly notify the new application under division 7.3.4; but
 - (b) must give written notice of the new application to anyone who made a representation under section 143 about the original application, allow the person reasonable time (that is not shorter than 2 weeks) to make a representation on the new application, and consider any representation made within the time allowed.
- (4) Also, in reconsidering the original decision, the planning and land authority—
 - (a) must consider any information available to the authority when it made the original decision and information given in the new application; and

(b) may consider any other relevant information.

Example of other relevant information

information from representations

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

- (5) The planning and land authority must ensure that, if the original decision is made on the authority's behalf by a person (the ***original decision-maker***), the authority or someone other than the original decision-maker reconsiders the decision.

175 No action by planning and land authority within time

If the planning and land authority does not make a substitute decision, nor confirm the original decision, by the end of the 20 working days mentioned in section 174, the planning and land authority is taken to have confirmed the original decision.

176 Notice of decision on reconsideration

- (1) As soon as practicable after reconsidering the original decision, the planning and land authority must give written notice of the decision on the reconsideration to the applicant and anyone who was given notice of the new application under section 174 (3) (b).
- (2) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Division 7.3.11 Correction and amendment of development approvals

177 Correcting development approvals

- (1) The planning and land authority may, on its own initiative or on application, correct a formal error in a development approval.

Note A fee may be determined under s 378 for this provision.

- (2) If the planning and land authority corrects a development approval, the authority must give the approval holder, or if there is more than 1, each approval holder, written notice about the correction.

Note **Approval holder**—see dict.

178 Amending development approvals

- (1) This section applies if—
 - (a) the planning and land authority has given development approval for a development proposal (the ***original development proposal***); and
 - (b) the development proposal changes (the ***changed development proposal***) so that it is not covered by the approval.
- (2) An approval holder may apply to the planning and land authority to amend the development approval so that it approves the changed development proposal.

Note A fee may be determined under s 378 for this provision.

- (3) The planning and land authority must refuse to amend the development approval if satisfied that the changed development proposal and the original development proposal would be in different assessment tracks.

- (4) Also, the planning and land authority 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.
- (5) In deciding whether to amend the development approval in accordance with the application, the planning and land authority must consider the application, and take action in relation to the application, as if—
 - (a) the development originally approved had been completed; and
 - (b) the application for amendment were an application for approval of a development proposal (the *proposed development*) to change the completed development to give effect to the amendment.
- (6) To remove any doubt, if public notification of the proposed development is required under the assessment track that applies to the proposed development, only the application for the amendment need be publicly notified.

Part 7.4 Developments without approval

179 Offence to develop without approval

- (1) A person commits an offence if—
- (a) the person undertakes development without development approval; and
 - (b) the development requires development approval; and
 - (c) the person knows, or could reasonably be expected to know, that the development requires development approval.

Maximum penalty:

- (a) for an individual—\$200 000; or
- (b) for a corporation—\$1 250 000.

Note Development approval is not required for continuing use lawfully commenced (see s 125).

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

Maximum penalty: 1 000 penalty units.

- (3) A person commits an offence if—
- (a) the person undertakes development without development approval; and

- (b) the development requires development approval; and
- (c) the person is negligent about whether the development requires development approval.

Maximum penalty: 500 penalty units.

- (4) A person commits an offence if—
 - (a) the person undertakes development without development approval; and
 - (b) the development requires development approval.

Maximum penalty: 100 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.
- (6) This section does not apply if the person has a reasonable excuse for undertaking the development without development approval.

180 Offence to undertake prohibited development

- (1) A person commits an offence if—
 - (a) the person undertakes development; and
 - (b) the development is prohibited; and
 - (c) the person knows, or could reasonably be expected to know, that the development is prohibited.

Maximum penalty:

- (a) for an individual: \$200 000; or
- (b) for a corporation: \$1 250 000.

Note Continuing use lawfully commenced is lawful while authorised and cannot be prohibited development (see s 216).

- (2) A person commits an offence if—
- (a) the person undertakes development; and
 - (b) the development is prohibited; and
 - (c) the person is reckless about whether the development is prohibited.

Maximum penalty: 1 000 penalty units.

- (3) A person commits an offence if—
- (a) the person undertakes development; and
 - (b) the development is prohibited; and
 - (c) the person is negligent about whether the development is prohibited.

Maximum penalty: 500 penalty units.

- (4) A person commits an offence if—
- (a) the person undertakes development; and
 - (b) the development is prohibited.

Maximum penalty: 100 penalty units.

- (5) Subsections (1), (2), (3) and (4) do not apply if the person has a reasonable excuse for undertaking the development.
- (6) An offence against subsection (4) is a strict liability offence.

181 Offence to develop other than in accordance with conditions

- (1) A person commits an offence if—
- (a) the person undertakes development; and

- (b) the person has development approval for the development; and
- (c) the development approval is conditional; and
- (d) the person does not comply with each condition of the development approval when undertaking the development.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse for not complying with each condition.
- (3) An offence against subsection (1) is a strict liability offence.

182 Development applications for developments undertaken without approval

- (1) This section applies if—
 - (a) a development has been undertaken; and
 - (b) development approval was required for the development; and
 - (c) there was no development approval for the development.
- (2) The lessee of the land where the development was undertaken may apply for approval for the development under part 7.3 (Development applications).
- (3) The planning and land authority must treat an application for development approval for the development as if the development had not been undertaken, subject to section 128 (2) (i) (Form of development applications).

Note Development applications (including an application to which this section applies) are decided under s 148.

- (4) To remove any doubt, the making of an application for approval of a development to which this section applies, or the approval of the application, does not affect any proceeding under this part, whether or not the proceeding starts before the making or approval of the application.

Chapter 8 Environmental impact statements and inquiries

Part 8.1 Interpretation—ch 8

183 Definitions—ch 8

In this chapter:

draft scoping document, for a proposal—see section 187 (2) (b).

EIS—see section 185.

environmental impact statement means an EIS (see s 185).

inquiry means an inquiry into an EIS established under section 199.

proponent, for a development proposal, means the person proposing the proposal.

Note See also s 184.

representation, about a draft scoping document, means a representation made about the draft scoping document under section 189.

184 Proponents

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

(2) In this section:

defined decision means a decision of the Territory, the Executive, a Minister or a territory authority about a proposal in relation to which a Minister is empowered—

- (a) to direct that an environmental impact statement be prepared; or
- (b) to establish a panel to conduct an inquiry.

relevant Minister, means the Minister responsible for the administration of the Act or subordinate law under which—

- (a) in relation to a statement or inquiry—the statement or inquiry is authorised to be prepared or conducted; or
- (b) in relation to a defined decision—the relevant decision is authorised to be made.

Part 8.2 Environmental impact statements

185 What is an *EIS*?

An *EIS* is an environmental impact statement prepared as prescribed by regulation.

186 When is an EIS required?

An EIS is required in relation to a development proposal if this Act requires an environmental impact statement in relation to the proposal.

Note An EIS is required under s 118. See div 7.2.4 for requirements for applications in the impact track.

187 Scoping of EIS

- (1) This section applies if the proponent for a development proposal for which an EIS is required applies to the planning and land authority under this section.

Note If a form is approved under s 379 for this provision, the form must be used.

- (2) The planning and land authority must—
- (a) identify the matters that are to be addressed by an EIS in relation to the development proposal; and
 - (b) prepare a written notice (the *draft scoping document*) of the matters; and

- (c) publicly notify the draft scoping document under section 188.

Note 1 If a form is approved under s 379 for this provision, the form must be used.

Note 2 A fee may be determined under s 378 for this provision.

- (3) The matters identified in the draft scoping document must include any minimum content for scoping documents prescribed by regulation.
- (4) The planning and land authority may, in the draft scoping document for a development proposal, require the proponent to engage a person from the list under section 197 to help prepare an EIS for the proposal.

188 Public notification of draft scoping document

- (1) The planning and land authority *publicly notifies* a draft scoping document by—
- (a) putting a notice in a daily newspaper and on the authority website stating—
- (i) that the document is available for public inspection and for purchase at stated places and times; and
- (ii) how and when representations may be made on the document; and
- (b) making 1 or more copies of the document available as stated in the notice; and
- (c) if practicable, making a copy of the document available on the authority website.

Note **Authority website**—see dict.

- (2) The period for making representations for subsection (1) (a) (ii) must not be shorter than 20 working days.

189 Representations about draft scoping document

Anyone may make a representation about a draft scoping document publicly notified under section 188.

Note If a form is approved under s 379 for this provision, the form must be used.

190 Publication of representations about draft scoping document

- (1) This section applies if—
- (a) the planning and land authority has publicly notified a draft scoping document under section 188; and
 - (b) a person makes a representation about the document in accordance with the notice under section 188 (1) (a).
- (2) The planning and land authority must—
- (a) make a copy of the representation available on the authority website until a decision is made on the development proposal to which the draft scoping document relates; and
 - (b) give a copy of the representation to the proponent of the proposal.

Note 1 This section is subject to s 372.

Note 2 **Authority website**—see dict.

191 Finalising scoping document

- (1) This section applies to a draft scoping document if the time for making representations on the document in accordance with the notice under section 188 (1) (a) has ended.
- (2) The planning and land authority must finalise the draft scoping document, taking into consideration any representation about the document.

192 Preparing and giving EIS

The proponent of a development proposal for which a scoping document has been finalised under section 191 must—

- (a) prepare an EIS that addresses each matter raised in the scoping document for the proposal; and
- (b) give the EIS to the planning and land authority for consideration.

193 Authority consideration of EIS

- (1) This section applies if the proponent of a development proposal gives the planning and land authority an EIS under section 192 or in accordance with a notice under section 194 (2).
- (2) The planning and land authority must—
 - (a) if satisfied that the EIS adequately addresses each matter raised in the scoping document for the proposal—accept the EIS; or
 - (b) in any other case—take action under section 194.
- (3) In this section:

EIS includes an EIS revised under section 194.

194 Chance to address unaddressed matters

- (1) This section applies in relation to the EIS for a development proposal given to the planning and land authority under section 192 if the authority is not satisfied that the EIS adequately addresses each matter (the *outstanding matters*) raised in the scoping document for the proposal.
- (2) The planning and land authority must give the proponent of the development proposal written notice that—
 - (a) the authority does not accept the EIS under section 193; and
 - (b) explains why the authority does not accept the EIS; and
 - (c) states the time within which the proponent may respond to the notice, whether by providing a revised EIS or otherwise.
- (3) The time stated under subsection (2) (c) must not be shorter than 20 working days.
- (4) In this section:
EIS includes an EIS revised under this section.

195 Referral of EIS to Minister

- (1) This section applies if—
 - (a) the planning and land authority accepts an EIS under section 193; or
 - (b) the authority has given the proponent for a development proposal written notice under section 194 and the time for responding to the notice has ended, whether or not the proponent has revised the EIS and given it to the authority.

- (2) The planning and land authority must give the EIS to the Minister.

Note The Minister may establish a panel to consider the EIS for the proposal (see pt 8.3).

- (3) If a development application has been made for the development proposal, the planning and land authority must give the application to the Minister with the EIS.

196 Minister may present EIS to Legislative Assembly

The Minister may, but need not, present to the Legislative Assembly an EIS given to the Minister under section 195.

197 Authority to prepare list of EIS consultants

- (1) The planning and land authority must prepare a list of people the authority considers appropriate to be consulted by people preparing an EIS.
- (2) However, the planning and land authority must not include a person on the list unless satisfied that the person has the experience or expertise to help people to prepare an EIS.
- (3) The list is a notifiable instrument.

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

Part 8.3 Inquiry panels

198 When may inquiry panel be established?

The Minister may establish a panel under section 199 to consider an EIS given to the Minister under section 195.

199 Establishment of inquiry panels

- (1) If the Minister may establish a panel to conduct an inquiry about an EIS, the Minister may establish the panel to inquire about any aspect of the EIS.
- (2) However, the Minister must not establish a panel to conduct an inquiry about the EIS later than 15 working days after the day the EIS is given to the Minister.
- (3) If the Minister establishes a panel to conduct an inquiry, the Minister must, in writing—
 - (a) prepare terms of reference for the inquiry; and
 - (b) give the proponent notice of the inquiry.

200 Time for reporting by inquiry panels

- (1) This section applies if the Minister establishes a panel to conduct an inquiry.

- (2) The panel must report in writing on the result of the inquiry not later than 60 working days after the day the Minister establishes the panel.

The existing powers and procedures for the operation of an inquiry panel (LP&E, s 135 to s 157) are to be reviewed during the public consultation period. Subject to this review, the aim is to incorporate a reduced, more streamlined set of measures into the Bill.

Chapter 9 Leases and licences

Note to ch 9

Other provisions about the termination of leases and licences and recovering possession of leases are found in pt 11.7. Licences over unleased public land are dealt with in pt 10.7.

Part 9.1 Definitions and application—ch 9

201 Definitions—ch 9

In this chapter:

building and development provision, in relation to a lease, means a provision of the lease that requires the lessee to carry out stated works on the land comprised in the lease or on unleased territory 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 comprised in the surrendered leases.

deal with a lease, means—

- (a) assign or transfer the lease; or
- (b) sublet the land comprised in the lease or part of it; or
- (c) part with possession of the land comprised in the lease or any part of it.

lease means a lease (other than a sublease) of territory land—

- (a) granted under this Act; or

(b) granted or arising under the *Unit Titles Act 2001*.

Note Some leases are taken to have been granted under this Act and so come within this definition of **lease** (see s 394).

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.

nominal rent lease means a lease for nominal rent.

provision, of a lease, includes a provision incorporated in the lease by reference and any other provision to which the lease is subject.

registered lease means a lease registered in the register kept under the *Land Titles Act 1925*.

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 nominal rent.

residential lease means a lease granted for residential purposes only.

rural lease means a lease granted for rural purposes or purposes including rural purposes.

subdivision—

- (a) means the surrender of 1 or more leases held by a single lessee, and the grant of new leases to the lessee to subdivide the parcels of land in the surrendered leases; but

- (b) does not include the subdivision of land under the *Unit Titles Act 2001*.

sublease means a sublease of—

- (a) a parcel of land, or part of a parcel of land, subject to a lease;
or
- (b) a building, or part of a building, on a parcel of land subject to a lease.

sublessee means the person who is the proprietor of a sublease, regardless of how the person became the proprietor of the sublease.

202 Meaning of *concessional lease*—Act

- (1) In this Act:

concessional lease—

- (a) means a lease granted for a consideration less than the full market value of the lease, or for no consideration, if neither of the following payments has been made to the Territory:
 - (i) an amount in relation to the grant of the lease that is equal to the lease's market value at the time of payment or, if the amount is paid in parts, at the time of the last payment;
 - (ii) an amount to reduce the rent payable under the lease to a nominal rent under section 240 (Variation of lease to pay out rent); and
- (b) includes the following leases:
 - (i) a consolidated or subdivided concessional lease;
 - (ii) a further concessional lease;

- (iii) a regranted concessional lease; but
- (c) does not include—
 - (i) a consolidated or subdivided lease or a further or regranted lease, other than a lease mentioned in paragraph (b); or
 - (ii) a rural lease; or
 - (iii) a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the commissioner for housing under the *Housing Assistance Act 1987*; or
 - (iv) a lease prescribed by regulation.
- (2) For subsection (1), definition of ***concessional lease***, paragraph (a), it does not matter whether the consideration for the grant of the lease was paid as a lump sum or is payable under the lease as rent.
- (3) In this section:

consolidated or subdivided concessional lease means a lease granted during a consolidation or subdivision involving the surrender of 1 or more previous leases if 1 or more of the previous leases was a concessional lease.

further concessional lease means a further lease if the surrendered lease was a concessional lease.

regranted concessional lease means a regranted lease (whether the regrant is on the same or different conditions) if the surrendered lease was a concessional lease.

203 Application—ch 9

This chapter does not apply to a transfer by the Territory of a registered lease if the Territory is the registered proprietor of the lease.

Part 9.2 Grants of leases generally

204 Effect subject to pt 9.7

This part has effect subject to part 9.7 (Rural leases).

205 Planning and land authority may grant leases

The planning and land authority is authorised to grant, on behalf of the Executive, leases that the Executive may grant on behalf of the Commonwealth.

Note 1 **Lease**—see s 201.

Note 2 For power to delegate this function, see s 19 (2).

206 Granting leases

- (1) The planning and land authority may grant a lease by—
- (a) auction; or
 - (b) tender; or
 - (c) ballot; or
 - (d) direct grant.

Note 1 Not everyone may be eligible to be granted a lease under paragraph (a), (b) or (c) (see s 207).

Note 2 Section 208, s 209, s 210 and s 211 apply to grants under paragraph (d).

Note 3 A fee may be determined under s 378 for this section.

- (2) A lease granted under this section must include a statement about whether the lease is a concessional lease.

Note A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see *Land Titles Act 1925*, s 17 (2)).

- (3) A lease granted under this section may include provisions—
- (a) requiring the lessee to develop the land comprised in the lease, or any unleased territory 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.

207 Eligibility for grant of lease by auction, tender or ballot

The planning and land authority may restrict the people eligible for the grant of a lease under section 206 (1) (a), (b) or (c) by stating, in the relevant notice of auction, tender or ballot, a class of people eligible or ineligible for the grant of a lease under the auction, tender or ballot.

208 Restriction on direct grant by authority

- (1) The planning and land authority must not grant a lease under section 206 (1) (d)—
- (a) unless—
 - (i) the grant is in accordance with criteria prescribed by regulation for this section; and
 - (ii) the Executive approves the grant; or
 - (b) unless—
 - (i) the grant is in accordance with criteria prescribed by regulation for this section; and

- (ii) the grant is in accordance with criteria prescribed by regulation for this paragraph; and
 - (iii) the Minister approves the grant; or
 - (c) unless the Executive approves the grant under subsection (2); or
 - (d) unless the grant is in accordance with section 209.
- (2) The Executive may approve the direct grant of a lease other than in accordance with criteria prescribed if satisfied that the grant meets 1 or more of the following objectives:
- (a) benefit the economy of the ACT or region;
 - (b) contribute to the environment, or social or cultural features in the ACT;
 - (c) introduce new skills, technology or services in the ACT;
 - (d) contribute to the export earnings and import replacement of the ACT or region;
 - (e) facilitate the achievement of a major policy objective.
- (3) The validity of a lease granted under section 206 (1) (d) is not taken to be affected by a failure to comply with the criteria prescribed by regulation for this section.

209 Direct grant if single person in restricted class

- (1) This section applies if—
- (a) under section 207 (Eligibility for grant of lease by auction, tender or ballot), the planning and land authority restricts the people eligible to apply for a lease; and
 - (b) only 1 person is eligible for the grant of the lease.

- (2) The planning and land authority may grant the lease to the person under section 206 (1) (d) without auctioning the lease, calling for tenders or holding a ballot.

210 Notice about direct grant

- (1) This section applies to a lease granted by the planning and land authority by direct grant under section 206 (1) (d) in a quarter.
- (2) The planning and land authority must, not later than 5 working days after the end of the quarter, give the Minister a statement that sets out the prescribed information for each lease to which this section applies granted in the quarter.
- (3) The Minister must present the information given under subsection (2) to the Legislative Assembly not later than 5 sitting days after the day the Minister receives the information.
- (4) To remove any doubt, the validity of a lease to which this section applies is not affected by a failure to comply with subsection (2) or (3) in relation to the lease.
- (5) In this section:

prescribed information, for a lease, means the following:

- (a) the name of the lessee;
- (b) a description of the parcel land comprised in the lease that is sufficient for dealings with the land under the *Districts Act 2002*, section 9;
- (c) the purpose for which the lease is granted;
- (d) the amount (if any) paid for the grant of the lease;

- (e) if the lease was granted with the approval of the Executive under section 208 (2)—the reason for granting the lease with the approval of the Executive.

211 Direct grant leases subject to agreed provisions

A lease granted under section 206 (1) (d) must be granted subject to the provisions that are agreed between the planning and land authority and the applicant for the lease.

212 Authority need not grant lease

- (1) The planning and land authority need not grant a lease to an applicant, even if applications for the lease have been invited.
- (2) If applications for a lease have been invited subject to conditions, the planning and land authority may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

213 Planning report before granting leases

- (1) The planning and land authority may, but need not, prepare a planning report in relation to a proposal to grant a lease.
- (2) The planning and land authority must prepare a planning report in relation to a proposal to grant a lease if directed in writing to do so by the Minister.

214 Payment for leases

- (1) The planning and land authority must not grant a lease other than for payment of an amount that is not less than the market value of the lease.

Note *Lease*—see s 201.

- (2) However, subsection (1) does not apply in relation to—
- (a) a lease granted for a rent that is the full market rental value of the lease; or
 - (b) a further lease (other than a rural lease) granted under section 221; or
 - (c) the grant of a lease prescribed by regulation.

215 Use of land for leased purpose

- (1) Territory land in relation to which a lease has been granted, whether before or after the commencement of this part, must not be used for a purpose other than a purpose authorised by the lease.

Note Beginning a use of land is development and may require development approval (see s 7, def **development**, par (c)).

- (2) However, if the lease authorises the land to be used for residential purposes, the land may also be used for a home occupation or home business.
- (3) Also, whatever purpose is authorised by a lease, the leased land may be used for a development of a type prescribed by regulation, in accordance with a development approval.

216 Continuing use of land etc

Note Section 217 contains exceptions to this section.

- (1) This section applies to the continuing use of land, or a building or structure on land—
- (a) if the use—

- (i) when it began, was authorised by a development approval or exempted from requiring development approval in a development table or by regulation; and
 - (ii) is authorised by—
 - (A) a lease for the land; or
 - (B) section 215; or
- (b) if—
 - (i) beginning the use, when it began, was exempted under this Act from requiring development approval; and
 - (ii) the use is authorised by—
 - (A) a lease for the land; or
 - (B) section 215.
- (2) The continuing use of the land, or building or structure, is lawful while authorised by a lease for the land or section 215, despite any other provision of this Act.

Note Continuing use to which this section applies does not require development approval (see s 125).

217 Exceptions to s 216

- (1) Section 216 does not authorise the erection, alteration or demolition of a building or structure on land, or the carrying out of earthworks or other construction work on land without development approval if, apart from section 216, development approval would be required for the erection, alteration, demolition or other work.

- (2) Also, section 216 does not authorise an increase in the use made of a building, structure or land if—
- (a) the use is authorised in relation to a smaller area; and
 - (b) the increase in the area of use happened after commencement day, or partly after commencement day; and
 - (c) the increase in use would require development approval apart from section 216.
- (3) Section 216 does not authorise the continuation of a use if continuing the use would contravene a requirement of an order, direction, notice or injunction under chapter 11 (Compliance).

218 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 comprised in the lease.

219 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.
- (2) The planning and land authority may, by written notice given to the person, end the person's right to be granted the lease.

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

- (3) The notice under subsection (2) must—
 - (a) state the ground on which it is given; and
 - (b) state that it takes effect on the day 28 days after the day it is given.
- (4) If the planning and land authority does not know the residential address of the person to whom the notice under subsection (2) is to be given, the authority may give the person the notice by publishing a copy of the notice in a daily newspaper.
- (5) A notice given under subsection (2) takes effect on the day 28 days after the day it is given.
- (6) A person whose right to be granted a lease has been ended under this section does not have any claim for compensation in relation to the ending of the right or for the recovery of any money paid to the planning and land authority in relation to the grant of the lease.

220 Restriction on dealings with certain leases

- (1) This section applies in relation to the following leases:
 - (a) a concessional lease;
 - (b) a lease that provides that the lessee cannot deal with the land, or part of the land, comprised in the lease without the prior written consent of the planning and land authority;
 - (c) a lease granted under section 206 (1) (d);
 - (d) a lease prescribed by regulation.

Note This section has extended application (see s 390 and s 391).

- (2) The lessee, or anyone else with an interest in the lease, must not, during the restricted period for the lease, deal with the lease without the written consent of the planning and land authority.
- (3) A dealing in relation to a lease to which this section applies made or entered into without consent has no effect.
- (4) The planning and land authority must not consent under this section to a dealing in relation to a lease unless—
 - (a) satisfied that the person to whom it is proposed that the lease should 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, is a person who satisfies the criteria prescribed under section 208 in relation to the class of leases in which the lease is included; or
 - (b) for a dealing that is a subletting—
 - (i) the lessee continues to be the main user of the lease; and
 - (ii) the lessee uses the lease for a purpose for which it was granted to the lessee; and
 - (iii) the sublessee uses the land for a purpose consistent with the purpose for which the lease was granted.
- (5) The validity of a dealing made or entered into with the consent of the planning and land authority is not affected—
 - (a) by a defect or irregularity in relation to the giving of the consent; or
 - (b) because a ground, or all grounds, for the consent had not arisen.

(6) In this section:

restricted period, for a lease to which this section applies, means—

- (a) for a concessional lease—the term of the lease; or
- (b) for a lease granted under section 206 (1) (d) other than a concessional lease—the period ending 5 years after the day the lease was granted; or
- (c) for a lease granted by restricted auction, restricted tender or restricted ballot—5 years after the day the lease was granted; or
- (d) for a lease that provides that the lessee cannot deal with the land, or part of the land, comprised in the lease without the prior written consent of the planning and land authority—the period stated in the lease or, if no period is stated, the term of the lease; or
- (e) for a lease prescribed by regulation—
 - (i) the period prescribed by regulation for the lease; or
 - (ii) if no period is prescribed—the term of the lease.

Part 9.3 Grants of further leases

221 Grant of further leases

- (1) This section applies if—
- (a) the holder of a lease (the *existing lease*) of land applies to the planning and land authority for the grant of a further lease of the land; and
 - (b) neither the Territory nor the Commonwealth needs the land for a public purpose; and
 - (c) either—
 - (i) the lessee surrenders the existing lease; or
 - (ii) the existing lease expired not more than 6 months before the application for the grant of a further lease; and
 - (d) for a lease other than a residential lease—all rent due under the existing lease is paid; and
 - (e) the criteria (if any) prescribed by regulation are satisfied.
- (2) The planning and land authority must grant the lessee a further lease of the land for a term not longer than—
- (a) 99 years for a lease other than a rural lease; or
 - (b) the period determined for a rural lease under section 243.

Note A fee may be determined under s 378 for this provision, subject to s (5).

- (3) A further lease granted under this section must include a statement about whether the lease is a concessional lease.

Note A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see *Land Titles Act 1925*, s 17 (2)).

- (4) A further lease begins on the day after the day the existing lease is surrendered.
- (5) If the term of a further lease granted under subsection (2) is not longer than the term of the existing lease, any fee payable under subsection (2) for the grant of the further lease must not be more than the cost of granting the further lease.
- (6) In this section:

existing lease includes a lease that has expired.

holder of a lease, in relation to a lease that has expired, means the person who held the lease when it expired.

222 Grant of further lease includes authorised use

- (1) This section applies if a further lease is granted under this part on the surrender of an existing lease.
- (2) The further lease must authorise each use of the leased land that the lease surrendered authorised.
- (3) However, this section does not apply if a change of use that involves a lease variation is applied for at the same time as the grant of the further lease is applied for.

Part 9.4 Concessional leases

Division 9.4.1 Deciding whether leases concessional

223 Application for decision about whether lease concessional

A lessee may apply to the planning and land authority for a decision about whether the lease is a concessional lease.

Note 1 If a form is approved under s 379 for this provision, the form must be used.

Note 2 A fee may be determined under s 378 for this provision.

224 Decision about whether lease concessional

- (1) On application under section 223, the planning and land authority must decide whether the lease is concessional or not.
- (2) If the planning and land authority has not made a decision on the application at the end of the period of 30 days after the day the application is made, the authority is taken to have decided that the lease is a concessional lease.

Note A lessee has a right to apply for review of a decision under this provision (see ch 12 and sch 1).

225 Authority may decide whether lease concessional on own initiative

The planning and land authority may, on its own initiative, decide whether a lease is concessional.

226 Decision that lease is concessional

- (1) This section applies if—
- (a) the planning and land authority decides that a lease is concessional; and
 - (b) either—
 - (i) no application is made to the AAT for review of the decision that the lease is concessional within the time allowed for applications; or
 - (ii) an application for review of the decision is made and the tribunal decides to confirm the decision.

Note The planning and land authority may decide that a lease is concessional under s 224 or s 225.

- (2) The planning and land authority must lodge a copy of the decision with the registrar-general for registration under the *Land Titles Act 1925*.

Division 9.4.2 Varying concessional leases

227 Application—div 9.4.2

This division applies to an application for development approval to vary a lease granted as a concessional lease, whether by surrender and regrant of the lease to remove the concessional status of the lease or otherwise.

228 Criteria for application to vary concessional lease

In deciding whether to approve an application for development approval to which this division applies, the planning and land authority or Minister must consider the following:

- (a) whether the Territory wishes to continue to monitor the lease holder and use of the lease by requiring consent before the lease is dealt with;
- (b) whether approving the application would cause any disadvantage to the community;
- (c) whether the application to vary the lease to make it a market value lease is, or is likely to be, part of a larger development and, if it is, or is likely to be, part of a larger development what the larger development will involve;
- (d) whether the Territory should buy back, or otherwise acquire, the lease.

229 Development approval of application about concessional lease subject to condition

If the planning and land authority or Minister approves a development application to vary a lease granted as a concessional lease, whether by surrender and regrant of the lease to remove the concessional status of the lease or otherwise, the approval is subject to the condition that the lessee pays the Territory the payout amount worked out under section 230.

Note For approval of development applications—see s 148.

230 Working out amount payable to discharge concessional leases

- (1) This section applies if a development application in relation to a lease is subject to the condition that the lessee pays the Territory the payout amount worked out under this section.
- (2) The payout amount for the lease is the amount worked out as follows:

$$MV - \left(\frac{AP}{OV} \times MV \right)$$

- (3) In this section:

AP, for a lease, means the amount (if any) paid for the lease at grant.

MV, for a lease, means the market value of the lease if it were a market value lease.

OV, for a lease, means the market value of the lease at grant if it had been a market value lease.

- (4) To remove any doubt, an amount paid as rent under a lease is not an amount paid for the lease.

231 Uses under leases varied by surrender and regrant to remove concessional status

- (1) This section applies to a lease varied only to remove the concessional status of the lease by surrender and regrant of the lease.
- (2) The regranted lease authorises each use authorised under the lease before the lease was varied to remove its concessional status.

- (3) To remove any doubt—
- (a) this section does not apply if the lease is varied other than to remove the concessional status of the lease; and
 - (b) subsection (2) applies despite anything to the contrary in the territory plan.

Part 9.5

Rent variations and relief from provisions of leases

232 Variations of rent

- (1) If the rent payable under a lease is varied in accordance with the provisions of the lease, the planning and land authority must give the lessee written notice of the variation.

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

- (2) A variation of rent mentioned in a notice under subsection (1) 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.

233 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 232 (1) about the variation, ask the planning and land authority in writing to review the variation.

- (3) The making of a request under subsection (2) does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.
- (4) If a request is made under subsection (2) in relation to a variation, the planning and land authority must review the variation and may confirm the variation or set it aside and substitute any other variation the authority considers appropriate.

234 Reduction of rent and relief from provisions of lease

- (1) The planning and land authority may approve—
 - (a) a reduction of the rent payable under a lease, or of the amount payable, in relation to any occupation of territory land; or
 - (b) the grant of relief, to a lessee or occupier of territory land, from compliance, completely or partly, with any provision to which the person's lease or occupation is subject.
- (2) The reduction or grant of relief may be for a maximum period of 3 years, and may include a period before the approval.
- (3) If the planning and land authority gives an approval under subsection (1), the liability or obligation of the lessee or occupier under the lease, or in relation to the person's occupation, is discharged for the period approved, to the extent of the reduction or grant of relief approved.
- (4) An approval under subsection (1) may be conditional.
- (5) If the planning and land authority approves a grant of relief to a lessee or occupier under subsection (1), the authority must give the lessee or occupier written notice of the reduction of rent or amount payable or other grant of relief approved.

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

- (6) For subsection (1), the reduction or grant of relief may be for, or include, a period before the commencement of this section.
- (7) Subsection (6), this subsection and subsection (8) expire 1 year after the day this section commences.
- (8) Subsection (6) is a law to which the Legislation Act, section 88 (Repeal does not end transitional effect) applies.

235 Access to leased land from roads and road related areas

- (1) The planning and land authority must not grant a lease of territory land unless satisfied that the lessee will, during the term of the lease, 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 way of an access road or track, or in another way, that the lessee may use without charge and for all purposes at any hour of the day or night.
- (2) A way of access to leased land provided by the planning and land authority because of subsection (1) (b)—
 - (a) must not interfere with a building, garden or stockyard on the land at the time the way of access is provided; and
 - (b) must be located in a way that causes as little damage or inconvenience to the lessee 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.

Part 9.6 Lease variations

LP&E, s 184A and s 184C will be included if proposal to introduce codified change of use charge does not progress.

236 Effect subject to pt 9.7

This part has effect subject to part 9.7 (Rural leases).

237 Application to surrender and regrant leases

- (1) A reference in this part to the *variation* of a lease includes a reference to the surrender of a lease and the grant of a new lease to the same lessee, subject to different provisions, over land—
 - (a) that is all or part of the land comprised in the surrendered lease; and
 - (b) that is not in an area identified in the territory plan as a future urban area.
- (2) However, a reference in this part to the *variation* of a lease does not include a reference to the surrender of a lease and the grant of a further lease under section 221.

238 Variation of rental leases

- (1) The planning and land authority must not execute a variation of a rental lease unless any rent, including additional rent, payable under the lease up to the day of variation has been paid.

- (2) If the planning and land authority executes a variation of a rental lease, the authority must reappraise the rent payable under the lease, following (as far as possible) the method provided by the rental provisions of the lease.

Note The application of subsection (2) (and s (3)) is reduced by subsection (4).

- (3) If the planning and land authority executes a variation of a rental lease, the rent payable under the lease is to be adjusted in accordance with the reappraisal under subsection (2) with effect from the day the variation is executed.
- (4) Subsections (2) and (3) do not apply to a variation of a rental lease—
- (a) to reduce the rent payable to a nominal rent; or
 - (b) otherwise affecting the rental provisions of the lease.

239 Advice of rent payable on variation of lease

- (1) This section applies if—
- (a) the planning and land authority agrees to a variation of a lease; and
 - (b) the lease is a lease under which rent or additional rent is payable.
- (2) The planning and land authority must—
- (a) calculate the amount that would be payable under the lease for rent, including additional rent, up to the day when the authority expects the variation to be executed; and

- (b) give the lessee written notice of—
 - (i) the amount calculated for rent, including additional rent, under paragraph (a); and
 - (ii) the day up to which the amount payable for rent and additional rent has been calculated; and
 - (iii) the day by which the authority requires payment of the amount stated under subparagraph (i) to allow the variation of the lease to be executed on the day stated under subparagraph (ii).

240 Variation of lease to pay out rent

- (1) A lease must not be varied to reduce the rent payable to a nominal rent unless—
 - (a) the lease is included in a class of leases prescribed by regulation; and
 - (b) all amounts payable to the Territory up to the day of variation of the lease for rates and land tax levied in relation to the land comprised in the lease have been paid; and
 - (c) the provisions of the lease requiring the lessee to develop the land comprised in the lease have been complied with up to the day of the variation; and
 - (d) the lessee has paid the Territory an amount decided by the planning and land authority by reference to any policy direction made under subsection (2).
- (2) The Minister may make policy directions for subsection (1) (d).

- (3) A policy direction under subsection (2) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) If a lease of territory land is varied to reduce the rent payable to a nominal rent, the lease as varied must provide that the lessee is to pay a rent of 5 cents each year if and when that rent is demanded.
- (5) The requirements of this section are in addition to, and not in substitution for, the requirements of the other provisions of this Act relating to the variation of leases.

241 No variations to extend term

The planning and land authority must not execute a variation of a lease to extend the term of the lease.

Consolidation and subdivision and change of use-LP&E, s 187A and s 187C not included awaiting outcome of consultancy on change of use.

242 No variation of certain leases for 5 years

- (1) This section applies to the following leases:
- (a) a lease to which section 220 applies (other than a concessional lease);
 - (b) a lease granted in accordance with section 209.

Note This section also applies to leases granted under the *Land (Planning and Environment) Act 1991*, s 164 (see s 391).

- (2) The planning and land authority must not consent to the variation of a lease to which this section applies earlier than 5 years after the day the lease is granted.

Part 9.7 Rural leases

Note pt 9.7

Improvements, in relation to rural leases, has a special meaning (see s 249).

Division 9.7.1 Further rural leases

243 Determinations for further leases—rural land

- (1) The Minister may make a determination for section 221 (2) (b).
- (2) A determination under subsection (1) may—
 - (a) fix the period, consistent with subsection (3), for which a further rural lease may be granted; and
 - (b) include a condition that a lessee pays, for the grant of a further lease—
 - (i) an amount stated in, or worked out in accordance with, the determination (an **amount condition**); or
 - (ii) the market value of the lease; and
 - (c) provide that an amount condition stops applying to a lessee if the lessee—
 - (i) has not applied for the grant of a further rural lease under section 221 within the period stated in the determination for applying for a grant; and
 - (ii) has not accepted in writing an offer for the grant of a further rural lease under section 221 within the period stated in the determination for accepting an offer.

- (3) If the national capital authority has set a maximum term for a rural lease of land in a designated area, a determination under subsection (1) relating to the land must not set a term for a further rural lease of the land that is longer than the maximum term.
- (4) A determination under subsection (1) is a disallowable instrument.
Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) A provision mentioned in subsection (2) (c) may apply to an amount condition of a determination made before the commencement of subsection (2).
- (6) Subsection (5), this subsection and subsection (7) expire 1 year after the day this section commences.
- (7) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end transitional effect) applies.

Division 9.7.2 Exceptions for rural leases

244 Definitions—div 9.7.2

In this division:

discharge amount means the discharge amount worked out as prescribed by regulation.

holding period, for a lease, is a period ending—

- (a) in relation to a lease for a term of 21 years or longer—10 years after the lease begins; or
- (b) in relation to a lease for a term shorter than 21 years—at the end of $\frac{1}{3}$ the term of the lease.

245 Land management agreements

- (1) This section applies to the following actions:
 - (a) granting a rural lease;
 - (b) granting a further rural lease;
 - (c) varying a rural lease;
 - (d) consenting to the assignment or transfer of a rural lease.
- (2) The planning and land authority may take action to which this section applies only if—
 - (a) the person to whom the lease is to be granted, assigned or transferred, or the person whose lease is to be varied, (the ***relevant person***) has entered into an agreement with the Territory about managing the rural land comprised in the lease; and
 - (b) the agreement complies with this section.
- (3) An agreement between a person and the Territory complies with this section if it is—
 - (a) in accordance with a form approved by the Minister under section 379 (Approved forms) for this section; and
 - (b) signed by—
 - (i) the conservator of flora and fauna; and
 - (ii) the person.
- (4) An agreement may contain a provision allowing the agreement to be varied other than by agreement between the parties.

246 Dealings with rural leases

Note Section 247 contains exceptions to this section.

- (1) This section applies to—
- (a) a rural lease granted under section 206 (Granting leases); and
 - (b) a lease granted under section 221 (Grant of further leases) on the payment of an amount worked out on the application of an amount condition mentioned in section 243 (2) (b) (i).

Note This section has an extended application (see s 393).

- (2) A lessee, or anyone else with an interest in the lease, must not deal with a lease to which this section applies without the written consent of the planning and land authority.
- (3) A dealing in relation to a lease made or entered into without consent has no effect.
- (4) The planning and land authority must not consent under this section to a dealing in relation to a lease unless—
- (a) the lessee's domestic partner or child is the person to whom—
 - (i) the lease is being assigned or transferred; or
 - (ii) the land comprised in the lease, or part of it, is sublet; or
 - (iii) possession of the land comprised in the lease, or part of it, is being given; or
 - (b) the discharge amount has been paid in relation to the lease.
- (5) The validity of a dealing made or entered into with the consent of the planning and land authority is not affected—
- (a) by a defect or irregularity in relation to the giving of the consent; or

- (b) because a ground, or all grounds, for the consent had not arisen.
- (6) To remove any doubt, a person is not required to pay a discharge amount more than once under this section in relation to a rural lease.
- (7) In this section:
child, of a lessee, includes a child of the lessee's domestic partner.

247 Exceptions to s 246

- (1) Section 246 does not apply to the transfer or assignment of a lease, or an interest in the lease, if—
 - (a) the lessee has died; or
 - (b) the transfer or assignment is 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 adjusting the property interests of the parties in a domestic relationship; or
 - (c) the transfer or assignment happens by operation of, or under, bankruptcy or insolvency.

248 No subdivision or consolidation of rural leases

The planning and land authority must not consent to the consolidation or subdivision of a lease to which section 246 applies during the holding period.

Part 9.8 Leases—improvements

249 Definitions—pt 9.8

In this part:

improvement, in relation to land, means—

- (a) a building or structure on the land; or
- (b) in relation to land held under a rural lease—
 - (i) a building or structure on or under the land; or
 - (ii) any improvement to the land 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 structure, means the construction, erection or installation of the building or structure.

250 Application of pt 9.8 to improvements

This part applies only to the following improvements to land:

- (a) an improvement undertaken in a way consistent with the law of the Territory, and with any lease over the land, other than—
 - (i) an improvement undertaken by the Territory or the Commonwealth (subject to paragraph (b)); or

- (ii) an improvement acquired by the Territory or the Commonwealth (subject to paragraph (c));
- (b) an improvement undertaken by the Territory or the Commonwealth, if the Territory or the Commonwealth has received, or is entitled to receive, payment for the improvement;
- (c) an improvement acquired by the Territory or the Commonwealth, if the Territory or the Commonwealth has received, or is entitled to receive, payment for the improvement.

251 Renewing lessee not liable to pay for improvements

- (1) This section applies if—
 - (a) the term of a lease ends; and
 - (b) there are improvements to which this part applies on the land comprised in the lease; and
 - (c) the lessee is granted a further lease of the land or part of it.
- (2) The lessee is not liable to pay the planning and land authority for the improvements on the land or part of the land.

252 Authority to pay for certain improvements

- (1) This section applies if—
 - (a) the term of a lease ends; and
 - (b) there are improvements to which this part applies on the land comprised in the lease; and

- (c) there is no provision in the lease that precludes or limits the right of the lessee to payment in relation to the improvements; and
- (d) the lessee is not granted a further lease of the land, or is granted a lease of only part of the land.

Note Section 254 and s 255 make this section apply in other cases.

- (2) The planning and land authority is liable to pay the lessee—
 - (a) if no further lease of the land is granted to the lessee—the amount decided by the planning and land authority to be the value of the improvements on the land; or
 - (b) if a further lease of part only of the land is granted to the lessee—the amount decided by the planning and land authority to be the value of the improvements to which this section applies on the part of the land not leased.

Note Under s 253, the planning and land authority may be required to deduct an amount from the amount payable under this section.

253 Land declared available for further lease

- (1) This section applies if—
 - (a) the planning and land authority is liable to pay a lessee an amount under section 252; and
 - (b) before the end of the term of the lease, the authority declared that the land comprised in the lease, or part of the land, was available for a further lease; and
 - (c) the lessee does not elect to take a further lease of the land, or part of the land, declared to be available not later than 6 months after the end of the term of the lease.

- (2) The amount of any expenditure reasonably incurred by the Territory, the planning and land authority or both, in relation to the grant of a lease of the land, or part of the land, to anyone else must be deducted from the amount payable to the lessee under section 252.

254 Lease surrendered or terminated

- (1) This section applies if—
- (a) a lease is surrendered or terminated; and
 - (b) the lessee has fully complied with the provisions (if any) of the lease relating to the erection of a building on the land comprised in the lease; and
 - (c) there is no provision in the lease that precludes or limits the right of the lessee to payment in relation to improvements on the land comprised in the lease.
- (2) Section 252 and section 253 apply in relation to the lease (so far as applicable) as if the term of the lease had ended on the day the lease was surrendered or terminated.
- (3) However, the amount worked out under subsection (4) must be deducted from any amount payable under section 252 to the lessee of the surrendered or ended lease.
- (4) The planning and land authority may work out the amount of the expenditure reasonably incurred by the Territory, the planning and land authority or both, in relation to the surrender or termination of the lease any grant of a further lease of the land or part of the land.

255 Withdrawal of lease or part before end

- (1) This section applies if—
- (a) before the end of the term of a lease, the planning and land authority withdraws all or part of the leased land from the lease under a provision of the lease; and
 - (b) the lessee has fully complied with the provisions (if any) of the lease relating to the erection of a building on the land comprised in the lease; and
 - (c) there is no provision in the lease that precludes or limits the right of the lessee to payment in relation to improvements on the land comprised in the lease.
- (2) Section 252 and section 253 apply in relation to the lease (so far as applicable) as if the term of the lease had ended on the day of the withdrawal.

256 Deciding value of improvements

- (1) In this section:
- assessment day* means—
- (a) in relation to land if the term of the lease has ended—the day the term ended; or
 - (b) in relation to land a lease of which has been terminated or surrendered—the day the lease was ended or surrendered; or
 - (c) in relation to land that has been withdrawn from a lease—the day of withdrawal.

market value, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale on the open market on the day before the assessment day on the reasonable terms and conditions that a genuine seller might require.

- (2) If compensation is payable under this part in relation to improvements, the planning and land authority must, as soon as practicable after the assessment day in relation to the land where the improvements are situated, in writing, decide, in accordance with this section, the market value of the improvements on the land as at the assessment day.
- (3) If compensation is payable under section 252, the planning and land authority must, in valuing the improvements, assume that a further lease of the land had been granted subject to the same provisions, and for the same term, as the lease the term of which has ended.
- (4) If compensation is payable under section 254, the planning and land authority must, in valuing the improvements, assume that the lease of the land had not been terminated or surrendered.
- (5) If compensation is payable under section 255, the planning and land authority must, in valuing the improvements, assume that the leased land or part of the leased land had not been withdrawn from the lease.

Part 9.9

Leases—certificates of compliance and building and development provisions

257 **Certificates of compliance**

- (1) If a building and development provision of a lease has been fully complied with, the planning and land authority must, on application by the lessee, issue a certificate of compliance stating that the provision has been complied with.

Note 1 A fee may be determined under s 378 for this subsection.

Note 2 A single form may be used for a number of provisions, so a joint certificate of completion, certificate of compliance and certificate of occupancy may be issued (see Legislation Act, s 255 (7)).

- (2) If a building and development provision of a lease of territory land has been partly complied with, the planning and land authority may issue a certificate of compliance stating that the provision has been partly complied with.
- (3) A certificate of compliance under subsection (2) may be issued subject to a condition (stated in the certificate) that the lessee provides security in a stated form against failure to complete stated outstanding work.
- (4) This section is subject to section 258.

258 Certificates of compliance provisions relating to Unit Titles Act leases

- (1) The planning and land authority must not issue a certificate of compliance under section 257 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).
- (2) The planning and land authority must be satisfied—
 - (a) for every other lease in relation to the same subdivision under the *Unit Titles Act 2001* that is subject to a building and development provision—that the provision has been complied with, or a certificate of compliance has been issued under section 257 in relation to the provision; or
 - (b) that the occupier of the unit that is held under the lease will not, as occupier, be substantially inconvenienced by works being carried out, or that are to be carried out, in compliance with a building and development provision to which the lease of the common property or another unit contained in the same subdivision under the *Unit Titles Act 2001* is subject.
- (3) For subsection (2), an occupier is *substantially inconvenienced* by works being carried out, or that are to be carried out, if the works are being, or are to be, carried out to the common property, or another unit, in the same stage of the development as the occupier's unit.

259 Mortgage of leasehold subject to building and development provision

- (1) This section applies if a lease contains a building and development provision.

- (2) The lease, or an interest in the lease, cannot be mortgaged unless—
- (a) the lessee has obtained a certificate of compliance under section 257; or
 - (b) the mortgage is required by the lessee—
 - (i) to allow the lessee to repay money borrowed by the lessee to acquire the lease or interest; or
 - (ii) to secure money borrowed by the lessee to acquire the lease or interest; or
 - (iii) to allow the lessee to comply with a building and development provision of the lease.

260 Transfer of land subject to building and development provision

- (1) A lease containing a building and development provision, or an interest in the lease, cannot be assigned or transferred, either at law or in equity unless—
- (a) the lessee has died; or
 - (b) the transfer or assignment is 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 adjusting the property interests of the parties in a domestic relationship; or

- (c) the transfer or assignment happens by operation of, or under, bankruptcy or insolvency; or
- (d) the lessee has—
 - (i) a certificate of compliance under section 257; or
 - (ii) the consent of the planning and land authority under subsection (2) or (3).

Note A consent under the *City Area Leases Ordinance 1936* may be taken to be a consent under s (2) (see *Land (Planning and Environment) Act 1991*, s 292 (expired)).

- (2) The planning and land authority may, in writing, consent to a legal or equitable assignment or transfer of a lease containing a building and development provision, or an interest in the lease, if—
 - (a) the authority—
 - (i) is satisfied that the proposed assignee or transferee intends to comply with the building and development provision; and
 - (ii) has been given the security (if any) required by the authority for compliance with the provision by the proposed assignee or transferee; and
 - (b) either—
 - (i) the authority is satisfied that the lessee cannot, for personal or financial reasons, comply with the building and development provision; or

- (ii) the proposed transferee or assignee (the **homebuyer**) has a contract with the person (the **builder**) proposing to transfer or assign the lease and, under the contract, the builder is required to build a home on the leased land for the homebuyer.

Note A fee may be determined under s 378 for this provision.

- (3) The planning and land authority may also, in writing, consent to a transfer of a lease containing a building and development provision, or an interest in the lease, if the proposed transfer is the first sale of an individual lease of undeveloped land by the person who provided the infrastructure on, and subdivided, the holding lease of which the individual lease is a subdivision.

Note A fee may be determined under s 378 for this provision.

- (4) In deciding under subsection (2) or (3) whether to consent to an assignment or transfer of a lease, the planning and land authority must take into consideration any matters determined by the Minister for the subsection.
- (5) A determination by the Minister mentioned in subsection (4) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Part 9.10 Surrendering and termination of leases

261 Refund on lease surrender or termination

- (1) This section applies if a lease is surrendered or terminated under this Act.
- (2) On application by the person surrendering the lease or the person whose lease has been terminated, the planning and land authority may authorise payment to the person of the amount prescribed by regulation.

Note A fee may be determined under s 378 for this provision.

- (3) The planning and land authority must not authorise the payment of an amount under this section otherwise than in accordance with criteria under subsection (4) for the authorisation of payments.
- (4) The Minister may determine criteria for the authorisation of payments under this section.

Note The power to make a statutory instrument (including the statement of criteria) includes power to amend or repeal the instrument (see Legislation Act, s 46).

- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

262 Lessee may surrender lease or part of lease

- (1) A person who holds a lease may, at any time, with the consent of the planning and land authority, surrender the lease or part of the land comprised in the lease.

Note 1 A fee may be determined under s 378 for this provision.

Note 2 For provisions about compensation for improvements, see pt 9.8.

- (2) The planning and land authority may agree to accept the surrender of a lease, or part of the land comprised in a lease, under subsection (1) either unconditionally or subject to any condition the authority considers appropriate.
- (3) The surrender of a lease, or part of the land comprised in a lease, does not entitle the lessee to a refund or remission of any rent already paid or owing.

Part 9.11 Licences for unleased land

Note to pt 9.11

Licences for public land are dealt with in pt 10.7.

263 Criteria for granting licences for unleased land

- (1) The Executive may determine criteria for the granting of licences to occupy or use unleased land.

Note A licence is a contractual right to do something that would be unlawful to do without the licence, eg to occupy or use land under the contract.

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

264 Applications for licences for unleased land other than public land

- (1) A person may apply to the planning and land authority for a licence to occupy or use an area of unleased territory land that is not public land.

Example of when a licence might be given to a person

to allow grazing of livestock on an area of unleased territory land that is not public land

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

- (2) An application under subsection (1) must—
 - (a) be in writing signed by the applicant; and

- (b) 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
- (c) be accompanied by a written consent by the custodian for the land proposed to be occupied or used to the issue of the licence applied for.

Note 1 If a form is approved under s 379 for this provision, the form must be used.

Note 2 A fee may be determined under s 378 for this subsection.

265 Decision on licence applications—unleased land other than public land

- (1) On receiving an application under section 264, the planning and land authority may grant the applicant a licence to occupy or use the land stated in the application for the purposes and period stated in the application.
- (2) However, the planning and land authority must not grant a licence under subsection (1) unless the custodian for the land has recommended the application for the licence be approved.

266 Licences granted under s 265

- (1) A licence granted under section 265 must—
 - (a) be in writing; and
 - (b) state the period for which it is granted.

- (2) A licence granted under section 265—
- (a) applies to the person to whom it is granted and to each other person to whom it is expressed to apply; and
 - (b) is subject to the conditions (if any) stated in the licence.

267 When s 265 licence not needed

A person need not hold a licence granted under section 265 to occupy or use an area of unleased territory land that is not public land if—

- (a) the person holds a permit under the *Roads and Public Places Act 1937* to place an object in, over or across the area; and
- (b) the area is being occupied or used in accordance with the permit; and
- (c) for an occupation or use that requires development approval—
 - (i) the occupation or use has development approval; and
 - (ii) if the occupation or use has development approval subject to a condition—the person is complying with the condition.

Part 9.12 Leases—miscellaneous

268 Land leased to be held as undivided parcel

- (1) The land comprised in a lease must at all times be held and occupied by or under the lessee as 1 undivided parcel, unless section 269 or section 270 provides otherwise.
- (2) The land comprised in a lease may be sublet and the lease and any interest in it may be assigned, transferred or mortgaged, unless a provision of this chapter provides otherwise.

269 Power of lessee to sublet part of building

- (1) Any part of a building erected on land comprised in a lease may, subject to the lease and any sublease of the land, be sublet separately from the remainder of the building.
- (2) If a part of a building is sublet separately from the remainder of the building, any part of the parcel of land where the building is erected may be sublet with the part of the building separately from the remainder of the parcel of land, as long as the part of the parcel of land sublet adjoins the part of the parcel of land where the building is erected.

270 Power of lessee to sublet part of land

Any part of land comprised in a lease may be sublet for a use allowed under the lease as a principal use of the land.

271 Evidence of ending of lease

- (1) The planning and land authority may certify in writing that a lease mentioned in the certificate has ended.

- (2) A certificate under subsection (1) is evidence of the matter it states.

272 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.

273 Access to lease documents and development agreements

- (1) The *Freedom of Information Act 1989*, section 11 (2) does not apply to a document that became a document of a Commonwealth agency before 1 January 1977 and is—
- (a) a lease; or
 - (b) a variation of a lease; or
 - (c) a renewal of a lease.
- (2) A document is taken not to be an exempt document for the *Freedom of Information Act 1989* if the document is—
- (a) a lease; or
 - (b) a variation of a lease; or
 - (c) a renewal of a lease.

Chapter 10 Management of public land

Part 10.1 Interpretation—ch 10

274 Definitions—ch 10

In this chapter:

custodian, for an area of public land or unleased land—see section 293.

custodianship map means the map created and notified under section 294.

management objectives, for an area of public land—see section 278.

plan of management means a plan of management under part 10.4.

variation, of a plan of management, includes the revocation of the plan and its substitution with a new plan.

Part 10.2 Providing for public land

275 Recommendations to planning and land authority

The custodian for an area of unleased land, or the conservator of flora and fauna, may, in writing, recommend to the planning and land authority that the territory plan be varied to provide for—

- (a) the identification of the area of land (or part of it) as public land and its reservation for a purpose mentioned in section 276; or
- (b) in relation to an area already identified in the plan as public land—
 - (i) the variation of the boundaries of the area to reduce or increase the size or the area, or to alter the shape of the area; or
 - (ii) the variation of the purpose for which the area is reserved; or
 - (iii) the land to stop being public land.

Part 10.3 Management of public land

276 Reserved areas—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;
- (h) a lake;
- (i) a sport and recreation reserve;
- (j) a heritage area.

277 Management of public land

An area of public land must be managed in accordance with—

- (a) the management objectives applying to the area; and
- (b) any plan of management for the area.

278 Management objectives for area of public land

- (1) The *management objectives* for an area of public land reserved for a particular purpose are—
 - (a) the management objectives stated in schedule 3 in relation to areas of land reserved for the purpose; and
 - (b) the management objectives stated by the conservator of flora and fauna under subsection (2) in relation to areas of land reserved for the purpose.

- (2) The conservator of flora and fauna may determine management objectives for an area of public land reserved for a purpose mentioned in schedule 3.

Note A power given under an Act to make a statutory instrument (including a determination of management objectives) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

- (3) A determination of management objectives is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 An amendment or repeal of a determination of management objectives is also a disallowable instrument (see Legislation Act, s 46 (2)).

- (4) If there is an inconsistency between the application of 2 management objectives stated in schedule 3 in relation to an area of public land, the objective appearing later in the schedule is to be read subject to the earlier objective.

(5) If there is an inconsistency between the application of a management objective stated in schedule 3 and a management objective stated by the conservator of flora and fauna under subsection (2) in relation to an area of public land, the objective stated by the conservator is to be read subject to the objective in schedule 3.

(6) In schedule 3:

natural environment means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

Part 10.4 Plans of management for public land

279 Meaning of *proponent*—pt 10.4

In this part:

proponent means—

- (a) for a draft plan of management for an area of public land—the custodian of the land; or
- (b) for a draft variation of a plan of management for an area of public land—
 - (i) the custodian of the land; or
 - (ii) if the draft variation was prepared by the conservator of flora and fauna—the conservator of flora and fauna.

280 Content of plans of management

A plan of management must include—

- (a) a description of the area of public land to which it applies; and
- (b) how the management objectives for the area are to be implemented or promoted in the area.

281 Preparation of plans of management

- (1) The custodian for an area of public land must prepare a draft plan of management for the area as soon as practicable after the area is identified as public land in the territory plan.

- (2) The custodian for an area of public land may prepare a draft plan of management for the area if the custodian considers the existing plan of management is outdated.
- (3) In preparing a draft plan of management for an area, the custodian for the area must consider any comment by the planning and land authority or the conservator of flora and fauna in relation to the area or the draft plan.

Note If the draft plan of management does not incorporate any comments by the planning and land authority or the conservator, an explanation of why must be given to the Minister (see s 286).

282 Variations of plans of management

- (1) The custodian for an area of public land, or the conservator of flora and fauna, may prepare a draft variation of a plan of management in the same way as a draft plan of management.
- (2) However, the conservator of flora and fauna must not prepare a draft variation of a plan of management for an area of public land unless the conservator has consulted the custodian for the area.
- (3) This part applies to a draft variation of a plan of management as if it were a draft plan of management.

283 Planning reports and SEAs—draft plans of management

- (1) At any time before a draft plan of management is approved under section 288 (2) (a), the Minister may direct that a planning report or strategic environmental assessment be completed for any aspect of the draft plan.
- (2) The Minister may act under subsection (1) after receiving a written request from the conservator of flora and fauna or on the Minister's own initiative.

- (3) In preparing or revising a draft plan of management, the proponent must consider any relevant planning report or strategic environmental assessment.

284 Public consultation about draft plans of management

- (1) This section applies to a draft plan of management (the *final draft plan*) for an area of public land if—

- (a) no preliminary draft plan of management for the area has been notified under section 61; or

Note A preliminary draft plan of management for an area would be notified under section 61 as a background paper to a territory plan variation (see s 57, def *background papers*).

- (b) if a preliminary draft plan of management has been notified under section 61—the final draft plan differs significantly from the preliminary draft plan.

- (2) The proponent of the final draft plan must make copies of the final draft plan available—

- (a) to an appropriate committee of the Legislative Assembly; and
(b) for public inspection during office hours at the places stated in a written notice (the *public inspection notice*) prepared by the proponent.

- (3) The public inspection notice must invite people to give written representations about the draft plan of management to the proponent at a stated address by not later than the end of a stated period of not less than 15 working days from the date the notice is notified under the Legislation Act.

- (4) The public inspection notice is a notifiable instrument.

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

- (5) The proponent of the final draft plan must also publish the public inspection notice in a daily newspaper.

285 Revision of draft plans of management

The proponent of a draft plan of management may revise the draft plan—

- (a) after considering any written representations received about the draft plan; or
- (b) to correct any formal error.

286 Giving draft plans of management to Minister

The proponent of a draft plan of management for an area of public land must give the draft plan (whether revised under section 285 or otherwise) to the Minister for approval, together with—

- (a) a written report setting out the issues raised in any written comments given to the proponent in relation to the draft plan; and
- (b) if the planning and land authority or conservator of flora and fauna made comments in relation to the area or the draft plan and the draft plan does not incorporate the comments—a written explanation of why the draft plan does not incorporate the comments; and
- (c) a written report about the proponent's consultation with the public and with anyone else about the draft plan.

287 Consideration of draft plans of management by Legislative Assembly committee

- (1) This section applies if the Minister is given a draft plan of management under section 286.

- (2) Not later than 5 working days after the day the Minister receives the draft plan of management, the Minister must give the following to an appropriate committee of the Legislative Assembly:
 - (a) a copy of the draft plan;
 - (b) a copy of the reports mentioned in section 286 relating to the draft plan.

288 Minister's powers on receiving draft plans of management

- (1) This section applies if the Minister receives a draft plan of management given for approval under section 286 or section 289.
- (2) The Minister must consider any recommendation relating to the draft plan of management by a committee of the Legislative Assembly that considers the draft under section 287 and—
 - (a) in writing, approve the plan of management in the form given; or
 - (b) refer the draft plan to the proponent of the draft together with 1 or more of the following written directions:
 - (i) to conduct further stated consultation;
 - (ii) to consider any revision suggested by the Minister;
 - (iii) to revise the draft in a stated way;
 - (iv) to defer giving the draft to the Minister again until a stated date or the happening of a stated event;
 - (v) to withdraw the draft in writing.

Note A plan of management approved by the Minister is a disallowable instrument (see s 291).

- (3) The following are notifiable instruments:
- (a) a deferral of a draft plan of management by the proponent of the draft plan in accordance with a direction under subsection (2) (b) (iv);
 - (b) a withdrawal of a draft plan of management by the proponent of the draft plan in accordance with a direction under subsection (2) (b) (v).

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

289 Referral of draft plans of management to proponent

If the Minister refers a draft plan of management to the proponent of the draft plan under section 288 (2) (b), the proponent must—

- (a) if the Minister gives a direction under section 288 (2) (b) (i)—comply with the Minister’s directions; and
- (b) if the Minister gives a direction under section 288 (2) (b) (ii) or (iii)—revise the draft plan if the proponent considers appropriate; and
- (c) revise the draft to correct any formal error; and
- (d) submit the draft plan of management (as revised) to the Minister for approval together with a written report about—
 - (i) the proponent’s compliance with the Minister’s directions; and
 - (ii) any revision of the draft under paragraph (c).

290 Notice of revival of deferred draft plan of management

- (1) This section applies if—
 - (a) the proponent of a draft plan of management defers the draft plan as directed under section 288 (2) (b) (iv) (Minister's powers on receiving draft plans of management); and
 - (b) either—
 - (i) the day stated in the deferral for revival of the draft plan arrives; or
 - (ii) the event mentioned in the deferral for revival of the draft plan happens.
- (2) The proponent of the draft plan of management must prepare a notice, on the day stated in the deferral, or as soon as possible after the event mentioned in the deferral, stating that the draft plan is revived.
- (3) A notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
- (4) The proponent of the draft plan of management must also publish the notice in a daily newspaper.

291 Plans of management—notification, presentation, disallowance and date of effect

- (1) A plan of management approved by the Minister under section 288 is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) Subject to any disallowance under the Legislation Act, chapter 7, the plan of management commences—
 - (a) on the day after the 6th sitting day after the day the plan is presented to the Legislative Assembly under that chapter; or
 - (b) if the plan provides for a later date or time of commencement—on the later date or time.

292 Review of plans of management

- (1) This section applies if there is a plan of management for an area of public land.
- (2) The custodian of the land must—
 - (a) review the plan of management at least once every 10 years; and
 - (b) if satisfied that the plan of management is no longer appropriate for the land—prepare a draft variation of the plan of management for the land (see s 282).

Part 10.5 Custodianship map

293 What is a *custodian*?

A *custodian* for an area of land is an entity given responsibility for the land in the custodianship map.

294 Custodianship map

- (1) The planning and land authority must create and maintain a map (the *custodianship map*) that identifies, and gives administrative responsibility for, unleased land and public land in the ACT.

Examples of possible responsibilities

- 1 responsibility for bushfire fuel and other land management tasks required by the *Emergencies Act 2004*
- 2 responsibility for weed control
- 3 responsibility for fencing
- 4 responsibility for providing rangers

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

- (2) The custodianship map may include anything else the planning and land authority considers appropriate.

Part 10.6 Leases for public land

295 Definitions—pt 10.6

In this part:

defined period, in relation to future public land, means the period of interim effect under part 5.3 of the draft plan variation that designates the land to become public land.

future public land means land designated to become public land in a draft plan variation publicly notified under part 5.3.

296 Leases of public land—generally

The planning and land authority must not, except in accordance with section 297, grant a lease—

- (a) of public land; or
- (b) of future public land during the defined period.

297 Grant of leases of public land

- (1) On the written recommendation of the conservator of flora and fauna and the custodian, the planning and land authority may grant a lease of an area, or part of an area, of public land unless the area is reserved under the plan as a wilderness area.
- (2) On the written recommendation of the conservator of flora and fauna and the custodian, the planning and land authority may, during the defined period, grant a lease of an area, or part of an area, of future public land unless it is proposed in the draft plan variation that designates the land to become public land that the area be reserved as a wilderness area.

Part 10.7 Licences for public land

298 Applications for licences for unleased public land

- (1) A person may apply for a licence to occupy or use an area of unleased public land.
- (2) An application for a licence under subsection (1) must—
 - (a) be in writing signed by the applicant; and
 - (b) 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
 - (c) be accompanied by a written consent, by the custodian of the land proposed to be occupied or used, to the issue of the licence applied for.

Note 1 If a form is approved under s 379 for this provision, the form must be used.

Note 2 A fee may be determined under s 378 for this subsection.

299 Decision on licence applications—unleased public land

- (1) On receiving an application under section 298, the planning and land authority may grant the applicant a licence to occupy or use the land stated in the application for the purposes and period stated in the application.

- (2) However, the planning and land authority must not grant a licence under subsection (1) unless the custodian for the area and the conservator of flora and fauna have agreed in writing to the grant.

300 Licences granted under s 299

- (1) A licence granted under section 299 must—
- (a) be in writing; and
 - (b) state the period for which it is granted.
- (2) A licence granted under section 299—
- (a) applies to the person to whom it is granted and to each other person to whom it is expressed to apply; and
 - (b) is subject to the conditions (if any) stated in the licence.

301 When s 299 licence not needed

A person need not hold a licence granted under section 299 to occupy or use an area of unleased public land if—

- (a) the person holds a permit under the *Roads and Public Places Act 1937* to place an object in, over or across the area; and
- (b) the area is being occupied or used in accordance with the permit; and
- (c) for an occupation or use that requires development approval—
 - (i) the occupation or use has development approval; and
 - (ii) if the occupation or use has development approval subject to a condition—the person is complying with the condition.

Part 10.8 Public land—miscellaneous

302 Miners' rights in relation to public land

A miner's right must not be granted in relation to public land.

Chapter 11 Compliance

Part 11.1 Interpretation—ch 11

303 Definitions—ch 11

In this Act:

complainant—see section 305 (1) (a).

controlled activity means—

- (a) an activity mentioned in schedule 2; or
- (b) an activity, including an activity under another Act, prescribed by regulation.

controlled activity order means an order made under part 11.4.

Part 11.2 Complaints about controlled activities

304 Who may complain?

Anyone who believes a person is conducting, or has conducted, a controlled activity may complain to the planning and land authority.

305 Form of complaint

(1) A complaint must—

- (a) identify the person making the complaint (the *complainant*); and
- (b) include a contact address for the complainant; and
- (c) identify the conduct complained about.

Examples of contact addresses

- 1 email address
- 2 postal address
- 3 work address
- 4 home address

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

- (2) A complaint may be made by any method of communication.

Examples of methods of communication

- 1 by email
- 2 spoken over the counter
- 3 by mail
- 4 by fax
- 5 by phone

306 Withdrawal of complaints

- (1) A complainant may withdraw the complaint at any time by written notice to the planning and land authority.
- (2) If the complainant withdraws the complaint, the planning and land authority—
 - (a) need take no further action on the complaint; but
 - (b) may continue to act on the complaint if the authority considers it appropriate to do so.
- (3) Also, if the complainant withdraws the complaint, the planning and land authority need not report to the complainant under section 309 on the result of any action in relation to the complaint.

307 Further information about complaints etc

- (1) The planning and land authority may, at any time, require a complainant to give the authority further information about the complaint.
- (2) When making a requirement under this section, the planning and land 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 a requirement made of the complainant under subsection (1), the planning and land authority may, but need not, take further action in relation to the complaint.

308 Investigation of complaints

The planning and land authority must take reasonable steps to investigate each complaint made in accordance with section 305.

309 Action after investigating complaints

- (1) After investigating a complaint made under this part, the planning and land 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) and take no further action in relation to the complaint;
Note For what the authority must consider for par (a), see s 310.
 - (b) if satisfied that the complaint can be more appropriately dealt with by another entity—refer the complaint to the other entity under section 311;
 - (c) if satisfied that the complaint contains evidence that suggests that a disciplinary ground exists in relation to a construction occupations licensee—refer the complaint to the construction occupations registrar;
 - (d) if sufficient grounds for issuing an information requirement exist—issue an information requirement under section 312;
 - (e) take action under part 11.4 (Controlled activity orders) in relation to the conduct complained about;

- (f) if grounds exist to issue an infringement notice in relation to the conduct complained about—issue an infringement notice under the *Magistrates Court (Planning and Development) Regulation 2006* in relation to the conduct;
- (g) if satisfied that it would be appropriate for rectification work to be done—direct a person to carry out rectification work under part 11.5 (Rectification work) in relation to the conduct complained about;
- (h) if satisfied that it would be appropriate to give a prohibition notice in relation to the conduct complained about—give a prohibition notice under part 11.6 (Prohibition notices) in relation to the conduct;
- (i) if satisfied that there are grounds for issuing an injunction in relation to the conduct complained about—apply to the Supreme Court for an injunction under part 11.7 (Injunctions, terminations and ending leases and licences) in relation to the conduct;
- (j) take action under part 11.7 to terminate a lease or licence;
- (k) take any other action the authority considers appropriate.

Examples for par (b)

- 1 the complaint is about a potential fire hazard and would be better dealt with by the emergency services authority
- 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

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

- (2) The planning and land authority must give the complainant written notice about the action the authority decides to take under subsection (1).

Note If a form is approved under s 379 for this provision, the form must be used.

- (3) To remove any doubt, the planning and land authority may take action under a provision mentioned in subsection (1) (c) to (j) even if the authority is not acting on a complaint.

- (4) In this section:

construction occupations licensee—

- (a) means a person who is licensed under the *Construction Occupations (Licensing) Act 2004*; and
- (b) in relation to conduct, includes a person who was licensed under that Act when the conduct happened.

disciplinary ground, in relation to a construction occupations licensee—see the *Construction Occupations (Licensing) Act 2004*, section 54.

rectification work—see section 329.

310 When authority satisfied no further action on complaint necessary

In considering whether no further action should be taken in relation to a complaint under section 309, the planning and land authority must consider whether—

- (a) the complaint lacks substance; or
- (b) the complaint is frivolous, vexatious or was not made honestly; or

- (c) the complaint has been adequately dealt with.

Examples of complaints lacking substance

- 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 1 The planning and land authority may also take no further action on a complaint if the complainant has not complied with a requirement made under s 307 (1) (see s 307 (3)).

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

311 Referral of complaints under s 309 (1) (b)

The planning and land authority refers a complaint to another entity by giving the other entity—

- (a) a copy of the complaint or a summary of the information provided in the complaint; and
- (b) any information relating to the complaint that the authority considers may be helpful to the entity; and
- (c) a statement about why the authority considers that the entity is more appropriate to deal with the complaint than the authority.

Part 11.3 Information requirements

312 Information requirements

- (1) This section applies if the planning and land authority suspects on reasonable grounds that a person—
 - (a) has knowledge of information (the *required information*) reasonably required by the authority for the administration or enforcement of this Act; or
 - (b) has possession or control of a document containing the required information.
- (2) The planning and land authority may give the person a notice (an *information requirement*) requiring the person to give the information, or produce the document, to the authority.
- (3) The information requirement must be in writing and 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 section 314.
- (4) A person does not incur any civil or criminal liability only because the person gives information, or produces a document, to the planning and land authority in accordance with an information requirement.

313 Treatment of documents provided under information requirement

- (1) The planning and land authority must return a document produced in accordance with an information requirement to the person who produced the document as soon as practicable.
- (2) To remove any doubt, before returning the document, the planning and land authority may make copies of, or take extracts from, the document.

314 Contravention of information requirements

A person commits an offence if the person intentionally contravenes a requirement of an information requirement.

Maximum penalty: 100 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and legal professional privilege.

Part 11.4 Controlled activity orders

Division 11.4.1 Controlled activity orders on application

315 Meaning of *show cause notice*—div 11.4.1

In this division:

show cause notice—see section 316 (3).

316 Applications to authority for controlled activity orders

- (1) A person may apply to the planning and land authority for a controlled activity order directed to 1 or more of the following:
 - (a) the lessee or occupier of a place where a controlled activity was, is being, or is to be, conducted;
 - (b) anyone by whom or on whose behalf a controlled activity was, is being, or is to be, conducted.
- (2) The application must state—
 - (a) the matter about which the controlled activity order is sought; and
 - (b) the kind of order sought by the person; and
 - (c) each person to whom the order sought is to be directed; and
 - (d) the place in relation to which the order is sought; and
 - (e) the grounds on which the order is sought.

Note If a form is approved under s 379 for an application, the form must be used.

- (3) The planning and land authority must give written notice (the ***show cause notice***) of the application to—
- (a) each person to whom the controlled activity order sought is to be directed; and
 - (b) if different from the person or people mentioned in paragraph (a)—the lessee or occupier of the place in relation to which the order is sought.
- Note* For how documents may be given, see the Legislation Act, pt 19.5.
- (4) The show cause notice must—
- (a) be accompanied by a copy of the application; and
 - (b) contain a statement to the effect that the person to whom it is given may, not later than 10 working days after the day the person is given the notice, give the planning and land authority written reasons explaining why the order should not be made.
- (5) The show cause notice may also include any other information that the planning and land authority considers appropriate.

317 Decision on application for controlled activity order

- (1) Before deciding whether to make a controlled activity order on an application under section 316, the planning and land authority must consider any reasons given in accordance with the show cause notice.
- (2) The planning and land authority may decide—
- (a) to make a controlled activity order of the kind sought; or
 - (b) to make a controlled activity order (including a different kind of order) that is not more burdensome than the order sought; or

- (c) not to make a controlled activity order.

Example of less burdensome order—par (b)

A person applies for an order for the demolition of an unapproved structure but the planning and land authority makes an order that a development application be lodged for the structure within a stated period and, if the application is not lodged within that period or is not approved, the structure is to be demolished.

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

- (3) A controlled activity order may be directed to 1 or more of the following:
- (a) the person against whom the order is sought to be directed;
 - (b) if the planning and land authority considers that the order would be more appropriately directed to someone else mentioned in section 316 (3) (b)—that person.
- (4) The planning and land authority is taken to have refused to make the controlled activity order applied for under section 316 if the authority fails to decide the application before the end of the period prescribed by regulation.

Note There may be a right of review for a decision under this section (see ch 12).

Division 11.4.2 Controlled activity orders on authority's initiative

318 Meaning of *show cause notice*—div 11.4.2

In this division:

show cause notice—see section 319 (2).

319 Controlled activity orders on authority's own initiative

- (1) This section applies if the planning and land authority proposes, on the authority's own initiative (whether because of a complaint under part 11.2 or otherwise), to make a controlled activity order directed to 1 or more of the following:
 - (a) the lessee or occupier of a place where a controlled activity was, is being, or is to be, conducted;
 - (b) anyone by whom or on whose behalf a controlled activity was, is being, or is to be, conducted.
 - (2) The planning and land authority must give written notice (the ***show cause notice***) of the authority's intention to make a controlled activity order to—
 - (a) each person to whom the order is to be directed; and
 - (b) if different from the person or people mentioned in paragraph (a)—the lessee or occupier of the place in relation to which the order is to apply.
- Note* For how documents may be given, see the Legislation Act, pt 19.5.
- (3) The show cause notice must—
 - (a) describe the controlled activity to which the notice relates; and
 - (b) state each person to whom a controlled activity order in relation to the activity would be directed.

- (4) Also, the show cause notice—
- (a) must contain a statement to the effect that the person to whom it is given may, not later than 10 working days after the day the person is given the notice, give the planning and land authority written reasons explaining why the controlled activity order should not be made; and
 - (b) may include any other information that the planning and land authority considers appropriate.

320 Inaction after show cause notice

- (1) This section applies if—
- (a) the planning and land authority has given a show cause notice under this division; and
 - (b) the authority has not made a decision under section 321 in relation to the controlled activity order mentioned in the notice within the time prescribed by regulation.
- (2) The planning and land authority is taken to have decided not to make the controlled activity order.
- (3) Also, the planning and land authority must not make the controlled activity order unless the authority gives a further show cause notice in relation to the order.

321 Decision on proposed controlled activity order on authority's own initiative

- (1) Before deciding whether to make a controlled activity order mentioned in a show cause notice, the planning and land authority must consider any reasons given in accordance with the show cause notice.

- (2) The planning and land authority may decide—
 - (a) to make a controlled activity order in relation to a controlled activity mentioned in the show cause notice; or
 - (b) not to make the controlled activity order mentioned in the show cause notice.
- (3) A controlled activity order may be directed to 1 or more of the following:
 - (a) the person against whom the order mentioned in the show cause notice is directed;
 - (b) if the planning and land authority considers that the order would be more appropriately directed to someone else mentioned in section 319 (2) (b)—that person.

Division 11.4.3 Provisions applying to all controlled activity orders

322 Content of controlled activity orders

- (1) A controlled activity order must state—
 - (a) that it is a controlled activity order under this Act made by the planning and land authority; and
 - (b) each person to whom the order is directed; and
 - (c) anyone else who is bound by the order (see s 324); and
 - (d) the terms of the order and the place in relation to which the order applies; and
 - (e) the grounds on which the order is made; and
 - (f) when the order takes effect; and

- (g) if appropriate—
 - (i) the period for compliance with the order; and
 - (ii) when the order ends (including, for example, on the happening of an event stated in the order).

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

- (2) A controlled activity order must also contain a statement to the effect that the order operates until it is revoked or ends in accordance with the order.
- (3) A controlled activity order may direct anyone to whom it is directed to do 1 or more of the following:
 - (a) not to begin a development without development approval;
 - (b) to stop carrying out a development without development approval;
 - (c) to stop, or not begin, a controlled activity other than a development;
 - (d) to comply with the terms of a development approval to undertake a development;
 - (e) to stop carrying out a development other than in accordance with a condition under which a development approval to carry out the development was given;
 - (f) to demolish a building or structure, or a part of a building or structure, that has been constructed or erected without development approval or permission required under a territory law;

- (g) to demolish a building or structure, or a part of a building or structure, that encroaches onto, over or under unleased territory land without approval granted under a territory law;
- (h) to restore any land, building or structure that has been altered without development approval or permission required under a territory law;
- (i) to replace with an identical building or structure any building or structure that has been demolished without development approval or permission required under a territory law;
- (j) to apply for development approval for a building or structure, or part of a building or structure, that has been constructed or erected without development approval;
- (k) to clean up a leasehold;
- (l) if the person to whom the order is directed is bound by a land management agreement—to comply with the land management agreement.

323 Notice of making of controlled activity orders

- (1) If the planning and land authority makes a controlled activity order, the authority must give notice of the making of the order to the following:
 - (a) each person to whom the order is directed;
 - (b) the applicant (if any) for the order;
 - (c) the lessee or occupier of the place in relation to which the order applies;
 - (d) the registrar-general;

- (e) anyone else whose interests the authority believes are adversely affected by the order.

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

- (2) To remove any doubt, if a person is given a notice under section 370 in relation to the making of a controlled activity order, the person need not be given a separate notice under this section in relation to the making of the order.

324 Who is bound by a controlled activity order?

- (1) A controlled activity order binds each person to whom it is directed.
- (2) If a controlled activity order binds the lessee of the place to which the order applies, unless the order otherwise provides, the order also binds anyone who becomes the lessee of the place after the order is made to the same extent as if the order had been directed to that person.
- (3) If a controlled activity order binds the occupier of the place to which the order applies, unless the order otherwise provides, the order also binds anyone who becomes an occupier of the place after the order is made to the same extent as if the order had been directed to that person.

325 Contravening controlled activity orders

- (1) A person commits an offence if—
 - (a) the planning and land authority makes a controlled activity order directed to the person; and
 - (b) the order requires the person to do, or not do, something stated in the order; and

(c) the person is given notice of the making of the order (whether by being given a copy of the order or otherwise); and

(d) the person contravenes the order.

Maximum penalty: the amount stated in schedule 2, column 3 in relation to the activity for which the order was made.

Note A territory authority is not liable to be prosecuted for an offence against this section (see Legislation Act, s 121).

(2) An offence against this section is a strict liability offence.

326 Notice of appeal against controlled activity orders

(1) This section applies if—

(a) a person complains about conduct under part 11.2; and

(b) because of the complaint, or investigations arising from the complaint, the authority makes a controlled activity order directed to a person (the *directed person*); and

(c) the directed person appeals to the AAT for review of the decision to make the order.

(2) The planning and land authority must tell the complainant in writing about the appeal.

327 Ending controlled activity orders

(1) A controlled activity order operates until it is revoked or ends in accordance with the order.

(2) A person who is bound by a controlled activity order may, in writing, apply to the planning and land authority for the revocation of the order.

- (3) The application must state the grounds on which the revocation of the controlled activity order is sought.
- (4) The planning and land authority may revoke the controlled activity order if satisfied, on reasonable grounds, that the order is no longer necessary or appropriate.

328 Notice ending controlled activity orders

- (1) If a controlled activity order ends otherwise than by being revoked, the planning and land authority must give written notice of the ending of the order to the registrar-general.
- (2) If the planning and land authority revokes a controlled activity order, the authority must give written notice of the revocation to each person given notice of the making of the order under section 323 (1).

Part 11.5 Rectification work

329 Definitions—pt 11.5

In this part:

authorised person—see section 332 (1).

rectification work means—

- (a) work in relation to a place where a controlled activity is being conducted to ensure compliance with the development approval for the activity; or
- (b) the conduct of an activity required under a controlled activity order that was not carried out within the period stated in the order.

330 Direction to carry out rectification work

- (1) The planning and land authority may direct 1 or more of the following to carry out rectification work in relation to a controlled activity:
 - (a) the lessee or occupier of a place where the activity was or is being conducted;
 - (b) anyone by whom or on whose behalf the activity was or is being conducted.
- (2) The planning and land authority must give notice of the direction to—
 - (a) the person who is required to comply with the direction; and

- (b) if different from the person mentioned in paragraph (a)—the lessee or occupier of the place to which the direction applies.

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

- (3) The notice must state—
 - (a) that it is a direction under this Act made by the planning and land authority; and
 - (b) the person who is required to comply with the direction; and
 - (c) the place in relation to which the direction applies; and
 - (d) the rectification work required; and
 - (e) the grounds on which the direction is given; and
 - (f) that the rectification work must be completed not later than 5 working days after the day the notice is given to the person or any longer period stated in the notice.
- (4) The notice must also contain a statement to the effect that, if the rectification work is not completed by the end of the period required by the notice—
 - (a) the planning and land authority may authorise someone else to carry out the work; and
 - (b) the reasonable cost of carrying out the work is a debt to the Territory by the person who is required to comply with the direction.
- (5) This section applies whether or not a proceeding for an offence against this chapter has been begun or is about to begin.

331 Contravening direction to carry out rectification work

- (1) A person commits an offence if—
- (a) the planning and land authority directs the person to carry out 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: 100 penalty units.

Note A territory authority is not liable to be prosecuted for an offence against this section (see Legislation Act, s 121).

- (2) An offence against this section is a strict liability offence.

332 Authorisation to carry out rectification work

- (1) The planning and land authority may authorise a person (an *authorised person*) to enter the place to which a direction under section 330 (Direction to carry out rectification work) applies to carry out 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 planning and land authority must not give the authorisation—
- (a) until the end of the period for making an application to the AAT for the review of the decision to make the order to which the rectification work relates; or
 - (b) if an application is made to the AAT for a review of the decision to make the order to which the rectification work relates—unless the decision is upheld or the application is withdrawn.

- (3) The authorised person must carry out the rectification work in accordance with the directions of an inspector.

333 Obstructing etc authorised people

- (1) A person commits an offence if—
- (a) the person knows that, or is reckless about the fact that, a person is an authorised person; and
 - (b) the person obstructs, hinders, intimidates or resists the authorised person in the exercise of the person's functions.

Maximum penalty: 100 penalty units, imprisonment for 6 months or both.

- (2) Strict liability applies to subsection (1) (b).

334 Liability for cost of rectification work

The person who is required to comply with a direction under section 330 (Direction to carry out rectification work) must pay to the Territory the reasonable cost of any rectification work carried out by an authorised person to which the direction related.

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

335 Criteria for deferral of rectification work costs

- (1) The planning and land authority may, in writing, determine circumstances when the payment of all or part of the cost of rectification work carried out by an authorised person on a lessee's leasehold may be deferred by the lessee.
- (2) A determination under subsection (1) is a notifiable instrument.

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

336 Application for deferral of rectification work costs

- (1) A lessee who is required to pay the cost of rectification work carried out on the lessee's leasehold may, in writing, apply to the planning and land authority for the deferment of payment of all or part of the cost of the rectification work.
- (2) The application must state the grounds for the application.

Note If a form is approved under s 379 for an application, the form must be used.

337 Deferral of rectification work costs

- (1) The planning and land authority may, in writing, declare that all or part of the cost of rectification work payable by a lessee is deferred if satisfied that a circumstance determined under section 335 (1) exists in relation to the lessee.

Note Interest is payable on the deferred amount, see s 338.

- (2) The planning and land authority may make a declaration under subsection (1) on its own initiative or on application under section 336.
- (3) The declaration must state—
 - (a) the leasehold to which the declaration relates; and
 - (b) the amount of the cost of the rectification work deferred.

338 Security for deferred rectification work costs

- (1) The planning and land authority must—
 - (a) lodge a copy of a declaration under section 337 with the registrar-general for registration under the *Land Titles Act 1925*; and

- (b) give a copy of the declaration to the lessee of the leasehold to which the declaration relates and anyone else who has an interest in the leasehold.
- (2) For the *Land Titles Act 1925*, section 104 (1) (Lodging of caveat), the Territory is taken to be a person claiming an interest in the leasehold to which the declaration relates.
- (3) The registration under the *Land Titles Act 1925* of the copy of a declaration under section 337 creates a charge over the leasehold to which the declaration relates for—
 - (a) the amount stated in the declaration; and
 - (b) interest on the amount calculated on a daily basis at the interest rate applying from time to time under the *Taxation Administration Act 1999*, section 26 (Interest rate).

339 Payment of deferred rectification work costs

- (1) If the full amount of the charge mentioned in section 338 (3) is paid to the Territory, the planning and land authority must—
 - (a) revoke the declaration to which the charge relates; and
 - (b) lodge a copy of the revocation with the registrar-general for registration under the *Land Titles Act 1925*; and
 - (c) give a copy of the revocation to the lessee of the charged leasehold and anyone else who has an interest in the leasehold.
- (2) The charge is discharged on the registration under the *Land Titles Act 1925* of the copy of the revocation of the declaration.
- (3) The lessees of a charged leasehold are liable separately and together for the payment to the Territory of the full amount of the charge.

- (4) A registered charge under this section does not give a power of sale over the leasehold to which it relates.

Part 11.6 Prohibition notices

340 Giving prohibition notices

- (1) This section applies if the planning and land authority believes, on reasonable grounds, that the giving of a notice under this section (a ***prohibition notice***) is necessary to prevent the conduct, or likely conduct, of a controlled activity.
 - (2) Also, this section applies whether or not—
 - (a) a controlled activity order has been made or is proposed to be made in relation to a controlled activity; or
 - (b) a proceeding for an offence against this chapter has begun or is about to begin.
 - (3) The planning and land authority may give a prohibition notice to 1 or more of the following:
 - (a) the lessee or occupier of a place to which the controlled activity relates;
 - (b) anyone by whom or on whose behalf the activity—
 - (i) was, is being, or is to be, conducted; or
 - (ii) is likely to be conducted.
- Note* For how documents may be given, see the Legislation Act, pt 19.5.
- (4) The prohibition notice must state—
 - (a) that it is a prohibition notice under this Act; and
 - (b) each person to whom it is directed; and

- (c) that the notice takes effect when it is given to a person to whom it is directed; and
- (d) the grounds on which the notice is given; and
- (e) the activity, and the place, in relation to which the notice applies; and
- (f) that the activity—
 - (i) must not be carried on by the person; or
 - (ii) must not be carried on by the person except in accordance with the notice; and
- (g) when the notice ends (including, for example, on the happening of an event stated in the notice).

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

- (5) A prohibition notice takes effect when it is given to a person to whom it is directed.
- (6) To remove any doubt, 2 or more prohibition notices may be given in relation to the same activity.

341 Contravening prohibition notices

- (1) A person commits an offence if—
 - (a) the planning and land authority gives a prohibition notice to the person; and
 - (b) the notice is directed to the person; and
 - (c) the notice states that a controlled activity must not be carried on by the person in relation to a place; and

- (d) the person carries on the activity in relation to the place.

Maximum penalty: 100 penalty units, imprisonment for 6 months or both.

Note A territory authority is not liable to be prosecuted for an offence against this section (see Legislation Act, s 121).

- (2) A person commits an offence if—
 - (a) the planning and land authority gives a prohibition notice to the person; and
 - (b) the notice is directed to the person; and
 - (c) the notice states that a controlled activity must not be carried on by the person in relation to a place except in accordance with the notice; and
 - (d) the person carries on the activity in relation to the place otherwise than in accordance with the notice.

Maximum penalty: 100 penalty units, imprisonment for 6 months or both.

- (3) An offence against this section is a strict liability offence.

342 Ending prohibition notices

- (1) A prohibition notice remains in force until it ends in accordance with this section.
- (2) A prohibition notice ends on the earlier of the following:
 - (a) the notice ends in accordance with the notice;
 - (b) the notice is revoked.

343 Application for revocation of prohibition notices

- (1) A person to whom a prohibition notice is directed may, in writing, apply to the planning and land authority for the revocation of the notice.
- (2) The application must state the grounds on which the revocation of the prohibition notice is sought.
- (3) The planning and land authority may revoke the prohibition notice if satisfied, on reasonable grounds, that the notice is no longer necessary or appropriate.

Part 11.7 Injunctions, terminations and ending leases and licences

344 Injunctions to restrain contravention of controlled activity orders or prohibition notices

- (1) This section applies if a person (the *relevant person*) has engaged, is engaging, or proposes to engage, in conduct that was, is, or would be, a contravention of a controlled activity order or prohibition notice.
- (2) The planning and land 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.

345 Termination of leases

- (1) This section applies if—
 - (a) a lessee contravenes this chapter or the lease; and
 - (b) the planning and land authority has complied with section 347 in relation to the lessee.
- (2) The planning and land authority may, by written notice (a ***termination notice***) given to the lessee, terminate the lease.

Note For how documents may be given, see the Legislation Act, pt 19.5.
- (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 planning and land authority must give a copy of the termination notice to—
 - (a) the registrar-general; and
 - (b) any person having an interest in the land comprised in the lease that is registered under the *Land Titles Act 1925*.

346 Termination of licences

- (1) This section applies if—
 - (a) a person who occupies territory land under a licence from the Commonwealth or the Territory contravenes this chapter or the licence; and
 - (b) the planning and land authority has complied with section 347 in relation to the licensee.
- (2) The planning and land authority may, by written notice given to the licensee, terminate the licence.
- (3) A notice under subsection (2) takes effect 5 working days after the day the notice is served.

347 Notice of termination

- (1) The planning and land authority must not terminate a lease or a licence under this part unless it has—
 - (a) by written notice given to the lessee or licensee—
 - (i) informed the lessee or licensee that it is considering terminating the lease or licence; and
 - (ii) stated the grounds on which it is considering taking that action; and
 - (iii) invited the lessee or licensee to tell the authority in writing not later than 15 working days after the day the lessee or licensee receives the notice why the lessee or licensee considers that the lease or licence should not be terminated; and

- (b) taken into account any reasons for not terminating the lease or licence given to the authority by the lessee or licensee in accordance with the notice served on the lessee or licensee under paragraph (a).
- (2) The validity of the termination of a lease or licence is not affected by a failure to comply with subsection (1).

348 How land may be recovered

- (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 Executive may, by written notice to the person (the ***unlawful occupier***), demand that the unlawful occupier give possession of the land to the Executive within the reasonable period stated in the demand.
- (3) If a demand is not complied with—
 - (a) the Executive may apply to the Magistrates Court for an order that possession of the land be given to the Executive; and

- (b) the court may issue a warrant authorising a police officer, within 20 working days after the day the warrant is issued, to enter the land with the assistance and by the force that is reasonable, and give possession of the land to the Executive.
- (4) The planning and land authority is authorised to do any of the following on behalf of the Executive:
 - (a) make a demand under subsection (2);
 - (b) make an application to the Magistrates Court under subsection (3) (a);
 - (c) take possession of land under this section.
- (5) In this section:

licence means a licence granted by the Territory, the Commonwealth or the planning and land authority.

Part 11.8 Enforcement

Division 11.8.1 General

349 Definitions—pt 11.8

In this part:

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 that there are reasonable grounds for believing has been, is being, or will be, committed.

premises includes land.

Division 11.8.2 Inspectors

350 Appointment of inspectors

The planning and land authority may appoint a person as an inspector for this part.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, div 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

351 Identity cards

- (1) The planning and land 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 planning and land authority as soon as practicable, but no 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.

Division 11.8.3 Powers of inspectors

352 Power to enter premises

- (1) For this Act, an inspector may—
 - (a) at any reasonable time, enter premises in relation to which a rectification notice or prohibition notice has been issued to check whether the notice is being complied with; or
 - (b) 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 of money); or
 - (c) at any time, enter premises with the occupier's consent; or
 - (d) enter premises in accordance with a search warrant.
- (2) However, subsection (1) (a) or (b) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an inspector may enter premises under subsection (1) without payment of an entry fee or other charge.

353 Production of identity card

An inspector must not remain at premises entered under this part if the inspector does not produce his or her identity card when asked by the occupier.

354 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 352 (1) (c), an inspector must—
 - (a) produce his or her identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the inspector under this part if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and

- (b) an acknowledgment of consent for the entry is not produced in evidence; and
- (c) it is not proved that the occupier consented to the entry.

355 General powers on entry to premises

- (1) An inspector who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
 - (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) require the occupier, or anyone at the premises, to give the inspector reasonable help to exercise a power under this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

356 Power to require name and address

- (1) An inspector may require a person to state the person's name and home address if the inspector believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The inspector must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the inspector to produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the inspector—
- (a) tells the person the reason for the requirement; and
 - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) In this section:

home address, of a person, means the address of the place where the person usually lives.

357 Power to seize things

- (1) An inspector who enters premises under this part with the occupier's consent may seize anything at the premises if—
 - (a) the inspector is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An inspector who enters premises under a warrant under this part may seize anything at the premises that the inspector is authorised to seize under the warrant.
- (3) An inspector who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—
 - (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an inspector may—
 - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if—
 - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and

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

Maximum penalty: 50 penalty units.

- (6) An offence against this section is a strict liability offence.

Division 11.8.4 Search warrants

358 Warrants generally

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the 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 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 warrant must state—
- (a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this part; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

359 Warrants—application made other than in person

- (1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) 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) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the inspector—
 - (a) the magistrate must—
 - (i) tell the inspector the terms of the warrant; and

- (ii) tell the inspector 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.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this part.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the inspector was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

360 Search warrants—announcement before entry

- (1) An inspector must, before anyone enters premises under a search warrant—
 - (a) announce that the inspector is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The inspector is not required to comply with subsection (1) if the inspector believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including the inspector or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

361 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the inspector or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

362 Occupier entitled to be present during search etc

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Division 11.8.5 Return and forfeiture of things seized

363 Receipt for things seized

- (1) As soon as practicable after an inspector seizes a thing under this part, 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 357 (Power to seize things).
- (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.

364 Moving things 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 do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
- (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An inspector may apply to a magistrate for an extension of time if the inspector believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
- (4) The inspector must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

- (5) If a thing is moved to another place under this section, the inspector must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

365 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

366 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing if—
 - (a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day of the seizure and—
 - (i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or

- (ii) a prosecution for an offence relating to the thing is begun within the 1-year period but the court does not find the offence proved; or
 - (b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
 - (i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or
 - (ii) a prosecution for an offence relating to the thing is so begun but the court does not find the offence proved; or
 - (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
 - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section that liability is disputed; or
 - (ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved.
- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
- (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the planning and land executive directs.

Division 11.8.6 Miscellaneous

367 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an inspector must take all reasonable steps to ensure that the inspector, and any person assisting the inspector, causes as little inconvenience, detriment and damage as practicable.
- (2) If an inspector, or a person assisting an inspector, damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of the particulars of the damage to the person the inspector believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

368 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 under this part by an inspector or a person assisting an inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) 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 it is 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.

Chapter 12 Review of decisions

369 Definitions—ch 12

In this chapter:

decision-maker, for a reviewable decision—each person mentioned in schedule 1, column 3 in relation to a reviewable decision is a *decision-maker* for the decision.

eligible entity, for a reviewable decision—each entity mentioned in schedule 1, column 4 in relation to a reviewable decision is an *eligible entity* for the decision unless.

reviewable decision—each decision mentioned in schedule 1, column 2 is a *reviewable decision*.

370 AAT review—general

- (1) An eligible person for a reviewable decision may apply to the AAT for review of the decision.
- (2) If a decision-maker makes a reviewable decision, the decision-maker must give written notice to each eligible person for the decision.
- (3) The notice under subsection (2) must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

**371 Challenge to validity of Ministerial decisions on
development applications**

- (1) The validity of a decision made by the Minister under section 148 (Deciding development applications) may not be questioned in any legal proceeding other than a proceeding begun not later than 28 days after the date of the decision.
- (2) In this section:
legal proceeding does not include an application to the administrative appeals tribunal.

Chapter 13 Miscellaneous

372 **Restrictions on public availability—comments, applications, representations and proposals**

- (1) This section applies to—
- (a) a person who makes consultation comments on a draft plan variation; or
 - (b) an applicant for development approval; or
 - (c) a person who makes a representation about a development application; or
 - (d) a person who makes a representation about a draft scoping document; or
 - (e) the proponent of a development proposal who gives the planning and land authority an EIS under section 192.
- (2) In this section:

relevant document means—

- (a) in relation to a person who makes consultation comments on a draft plan variation—the consultation comments; or
- (b) in relation to an applicant for development approval—the application for development approval; or
- (c) in relation to a person who makes a representation about a development application—the representation; or
- (d) in relation to a person who makes a representation about a draft scoping document—the representation; or

- (e) in relation to the proponent of a development proposal who gives the planning and land authority an EIS under section 192—the EIS.
- (3) A person to whom this section applies may apply (by *exclusion application*) in writing to the planning and land authority for part of the relevant document to be excluded from being made available for public inspection.
- (4) The planning and land authority may approve or refuse to approve the exclusion application.
- (5) The planning and land authority must approve the exclusion application if satisfied that the part of the relevant document to which the exclusion 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.
- (6) If the planning and land authority approves an exclusion application in relation to part of the relevant document, the part must not be made available to the public.
- (7) If part of the relevant document is excluded from copies of the relevant document made available for public inspection, each copy must include a statement to the effect that an unmentioned part of the relevant document has been excluded to protect the confidentiality of information included in the part.

373 Rights to extract minerals

- (1) The planning and land authority may, by a lease or other agreement, grant a person the right to extract minerals from stated territory land.
- (2) The provisions of a lease or other agreement entered under subsection (1) are the provisions agreed between the parties.

374 Meaning of *material detriment*—Act

- (1) In this Act:
material detriment, in relation to land—an entity suffers *material detriment* in relation to land because of a decision if—
 - (a) the decision has, or is likely to have, an adverse impact on the entity’s use or enjoyment of the land; or
 - (b) for an entity that has objects or purposes—the decision relates to a matter included in the entity’s objects or purposes.
- (2) However, an entity does not suffer material detriment in relation to land because of a decision only because the decision increases, or is likely to increase, direct or indirect competition with a business of the entity or an associate of the entity.

Note 1 Associate—see dict.

Note 2 Material detriment is used in sch 1.

375 Ministerial guidelines

- (1) The Minister may approve guidelines for the exercise of any power by the Minister under this Act.
- (2) The Minister may, but need not, consider advice from the planning and land authority before approving guidelines.

- (3) Guidelines are a notifiable instrument.

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

376 Expiry of notifiable instruments

- (1) This section applies to a notifiable instrument under any of the following provisions:
- section 61
 - section 66
 - section 68
 - section 73
 - section 78
 - section 80
 - section 83.
- (2) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

377 Declaration of authority website

- (1) The Minister may declare a website to be the planning and land authority website.
- (2) A declaration is a notifiable instrument.

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

378 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

379 Approved forms

- (1) The planning and land authority may, in writing, approve forms for this Act.
- (2) If the planning and land authority approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

380 Regulation-making power

- (1) The Executive may make regulations for this Act.

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

- (2) A regulation may make provision in relation to—
- (a) environmental impact statements; and
 - (b) planning reports; and
 - (c) strategic environmental assessments; and
 - (d) dividing land, including—
 - (i) the creation of districts, divisions, sections and blocks; and
 - (ii) deposited plans.

- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Chapter 14 Transitional

381 Definitions—ch 14

In this part:

commencement day means the day this Act commences.

repealed Act means the *Land (Planning and Environment) Act 1991*.

382 Repeals

- (1) The following legislation is repealed:
 - (a) the *Land (Planning and Environment) Act 1991* A1991-100;
 - (b) the *Land (Planning and Environment) (Bushfire Emergency) Regulation 2003* SL2003-4;
 - (c) the *Land (Planning and Environment) Regulation 1992* SL1992-5;
 - (d) the *Magistrates Court (Land Planning and Environment Infringement Notices) Regulation 2003* SL2003-27;
 - (e) the *Planning and Land Act 2002* A2002-55;
 - (f) the *Planning and Land Regulation 2003* SL2003-16.
- (2) All other legislative instruments under the *Land (Planning and Environment) Act 1991* are repealed.

383 Existing rights to use land not affected

- (1) This section applies if—
- (a) immediately before commencement day—
 - (i) a person had a right to use land in a way; and
 - (ii) the person's right to use the land was authorised by—
 - (A) the repealed Act, section 175 (Use of land for leased purpose); or
 - (B) a lease granted or varied under the repealed Act; and
 - (iii) the person had begun to use the land in accordance with the authority (the *way authorised*); and
 - (b) the person's use was authorised by the authority at the time the person began the use.
- Note 1* Section 385 contains exceptions to this section.
- Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including a regulation or the territory plan (see Legislation Act, s 104).
- (2) The use of the land in the way authorised is lawful, despite any other provision of this Act.
- (3) Also, to remove any doubt, a person need not apply for development approval to continue to use the land in the way authorised.
- (4) However, if the authority to use the land in the way authorised comes from a lease, the authority only lasts while the lease continues to authorise the use.

384 Presumption that use begun for s 383

- (1) This section applies to a use of land under section 383 if—
 - (a) the use was authorised because it was listed as a permitted use under a lease in force immediately before commencement day; or
 - (b) the use was authorised by the repealed Act, section 175 (Use of land for leased purpose).
- (2) In the absence of evidence to the contrary, the use—
 - (a) is taken, immediately before commencement day, to have begun in accordance with the authority; and
 - (b) is taken to have been authorised by the authority at the time it began.

385 Exceptions to s 383

- (1) Section 383 does not authorise the erection, alteration or demolition of a building or structure on land, or the carrying out of earthworks or other construction work on land without development approval if, apart from section 383, development approval would be required for the erection, alteration, demolition or other work.
- (2) Section 383 does not authorise an increase in the use made of a building, structure or land if—
 - (a) the use is authorised in relation to a smaller area; and
 - (b) the increase in the area of use happened after commencement day, or partly after commencement day; and
 - (c) the increase in use would require development approval apart from section 383.

- (3) Section 383 does not authorise the continuation of a use if continuing the use would contravene a requirement of an order, direction, notice or injunction under chapter 11 (Compliance).

386 Transitional—application to apply for otherwise prohibited development

- (1) This section applies to a development proposal to begin a use if—
- (a) the use was authorised immediately before commencement day by—
 - (i) the repealed Act, section 175 (Use of land for leased purpose); or
 - (ii) a lease granted or varied under the repealed Act; but
 - (b) beginning the use on or after commencement day is a prohibited development.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) Despite section 126—
- (a) a person may apply to the planning and land authority under chapter 7 (Development approvals) for development approval for the proposal; and
 - (b) the proposal is taken not to be prohibited development; and
 - (c) the impact track applies to the proposal.

387 Transitional—effect of s 218

To remove any doubt, section 218 does not apply in relation to leases or further leases granted before 4 March 1999.

388 Transitional—meaning of *development*—Act

To remove any doubt, the definition of *development* in section 7 applies in relation to a lease, whether granted before or after the commencement of this Act.

389 Transitional provision for community leases

- (1) To remove any doubt, after commencement day, a person may deal with a lease granted under the repealed Act, section 163 (Leases to community organisations) with the consent of the planning and land authority under section 220 (4) (Restriction on dealings with certain leases).
- (2) In this section:
deal with a lease—see section 201.

390 Transitional provision for special leases—s 220

- (1) Section 220 also applies to a lease (a *special lease*) granted under the repealed Act, section 164 (Special leases).
- (2) The planning and land authority must not consent under section 220 (4) to a person dealing with a special lease unless satisfied that the person to whom it is proposed that the lease should 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—
 - (a) is a person who, if the lease were being granted, could have been granted the lease in accordance with the repealed Act, section 164 as in force immediately before commencement day; and

- (b) can satisfactorily continue to operate the lease for a purpose authorised by the lease.
- (3) For a special lease, the *prescribed period* under section 220 (6) is 5 years after the date the lease is granted.
- (4) In this section:
deal with a lease—see section 201.

391 Transitional provision for Leases Act 1918 leases—s 220

- (1) Section 220 also applies to a lease (an *old lease*) granted under the *Leases Act 1918*, as in force at any time.
- (2) The planning and land authority must not consent under section 220 (4) to a person dealing with an old lease unless satisfied that the person to whom it is proposed that the lease should 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—
 - (a) is a person who, if the lease were being granted, could have been granted the lease in accordance with the *Leases Act 1918* (repealed); and
 - (b) can satisfactorily continue to operate the lease for a purpose authorised by the lease.
- (3) For an old lease, the *prescribed period* under section 220 (6) is the term of the lease.
- (4) In this section:
deal with a lease—see section 201.

392 Extended application of s 242

Section 242 also applies to a lease granted under the repealed Act, section 164 (Special leases).

393 Extended application of s 246

Section 246 also applies to—

- (a) a rural lease granted under the repealed Act, section 161 (Granting of leases) after 15 December 1999 for consideration less than the market value of the lease; and
- (b) a lease granted under the repealed Act, section 171A (Grant of further rural leases) after 15 December 1999 on the payment of an amount worked out on the application of an amount condition mentioned in the repealed Act, section 171A (3) (a).

394 Status of leases and licences

- (1) This section applies to a lease or licence—
 - (a) granted or continued, or purported to have been granted or continued under the repealed Act; and
 - (b) in force immediately before commencement day.
- (2) Subject to section 395, the lease or licence is taken, on and after commencement day, to have been granted under this Act.

395 Continued application of certain repealed Acts and provisions

- (1) The *Australian National University (Leases) Act 1967* (repealed) continues to apply in relation to a lease—
 - (a) granted under, or continued in force by, that Act; and

- (b) in force immediately before commencement day.
- (2) The *Canberra College of Advanced Education (Leases) Act 1977* (repealed) continues to apply in relation to a lease—
 - (a) granted under that Act; and
 - (b) in force immediately before commencement day.
- (3) However, for subsection (2), the *Canberra College of Advanced Education (Leases) Act 1977* (repealed), section 5 is taken to apply as if that section had been amended by omitting ‘in perpetuity’.
- (4) The *Church Lands Leases Act 1924* (repealed), sections 5, 6, 8 and 10 continue to apply in relation to a lease—
 - (a) granted under that Act; and
 - (b) in force immediately before commencement day.
- (5) In a continuing lease, a reference to **improvements** is a reference to improvements other than improvements by way of clearing, draining, grading, filling, excavating or levelling made by the Territory or the Commonwealth or the cost of which the Territory or the Commonwealth has paid.
- (6) The following sections of the *City Area Leases Act 1936* (repealed), continue to apply:
 - (a) so far as the section relates to a continuing lease in which provision is made for the land comprised in the lease to be used for a purpose mentioned in that Act, section 8A (1)—section 8A;
 - (b) so far as the section relates to a variation of a continuing lease in relation to which notice under that Act, section 18A of that Act was given before the commencement day—section 18B;

- (c) so far as the section relates to a continuing lease in relation to which notice under the section was given before the commencement day—section 22;
 - (d) so far as the section relates to a continuing lease mentioned in that Act, section 28A (1)—section 28A;
 - (e) so far as the section relates to a continuing lease mentioned in that Act, section 28DA (1)—section 28DA;
 - (f) so far as the section relates to a sublease mentioned in that Act, section 30A (2) and in force immediately before 2 April 1992—section 30A.
- (7) Despite the repeal of the *Leases (Special Purposes) Act 1925*, that Act, sections 5AC, 5AD, 5A and 5B continue to apply in relation to a lease of territory land—
- (a) granted under that Act, section 3 (2) as in force immediately before 11 May 1989; and
 - (b) in force immediately before commencement day.
- (8) The *Leases (Special Purposes) Act 1925* (repealed), section 5BA (6) continues to apply in relation to a lease—
- (a) granted under that Act; and
 - (b) in force immediately before commencement day.
- (9) In this section:
- continuing lease*** means a lease granted or continued, or purported to have been granted or continued, under the *City Area Leases Act 1936* and to which this Act, section 394 applies.

- (10) Subsections (1) to (9) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (11) This section expires on commencement day.

396 Transitional—certain controlled activities

A reference in schedule 2, item 5 to having a building or structure that was erected without approval required by this Act, chapter 7 (Development approvals) includes a reference to having a building or structure that was erected without approval required by—

- (a) the *Land (Planning and Environment) Act 1991*, division 6.2 (Approvals) as in force at any time; or
- (b) the *Buildings (Design and Siting) Act 1964* as in force at any time.

Schedule 1 Reviewable decisions and eligible people

(see s 369)

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
1	decision under s 130 (4) to refuse to extend the period within which further information must be provided	planning and land authority	applicant for extension of time
2	decision under s 148 to approve a development application in the code track subject to conditions	planning and land authority	applicant

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
3	decision under s 148 to approve a development application in the merit track subject to a condition or to refuse to approve the application	planning and land authority or Minister	applicant
4	decision under s 148 to approve a development application in the merit track, whether subject to a condition or otherwise, if the application was required to be notified under s 141 and s 142, unless the application is exempted by regulation	planning and land authority	an entity if— (a) the entity made a representation under s 143 about the proposal or had a reasonable excuse for not making a representation; and (b) the approval of the development application may cause the entity to suffer material detriment

Schedule 1

Reviewable decisions and eligible people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
5	decision under s 148 to approve a development application in the impact track subject to a condition, or to refuse to approve the application	planning and land authority or Minister	applicant
6	decision under s 148 to approve a development application in the impact track, whether subject to a condition or otherwise, unless the application is exempted by regulation	planning and land authority	an entity if— (a) the entity made a representation under s 143 about the proposal or had a reasonable excuse for not making a representation; and (b) the approval of the development application may cause the entity to suffer material detriment

EXPOSURE DRAFT

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
7	decision of entity required, under condition on development approval, to be satisfied in relation to carrying out of development or stage of development (see s 150 (3) (a))	entity whose satisfaction required by condition on development approval	approval holder
8	decision under s 150 (5) to refuse to approve an amendment of a plan, drawing or other document approved in accordance with a condition of a development approval	planning and land authority	approval holder

Schedule 1

Reviewable decisions and eligible people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
9	decision under s 168 (3) to refuse to extend the prescribed period for finishing development or stage of development	planning and land authority	approval holder
10	decision under s 171 to revoke development approval	planning and land authority	approval holder of approval revoked
11	decision on reconsideration under s 174 (1) (b) (i) to approve application subject to condition	planning and land authority	applicant for reconsideration
12	decision under s 174 (1) (b) (ii) to confirm original decision on reconsideration	planning and land authority	applicant for reconsideration

EXPOSURE DRAFT

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
13	decision under s 178 to refuse to amend development approval	planning and land authority	approval holder
14	decision under s 206 to refuse to grant a lease to a person by auction, tender or ballot because the person does not satisfy criteria stated under s 208 (2) (b) in relation to the lease	planning and land authority	applicant for grant of lease
15	decision under s 219 (2) to end person's right to be granted a lease	planning and land authority	person whose right is ended
16	decision under s 220 to refuse to consent to a dealing with a lease	planning and land authority	lessee

Schedule 1

Reviewable decisions and eligible people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
17	decision under s 221 to refuse to grant a further lease	planning and land authority	applicant for grant of further lease
18	decision under s 224 or s 225 that a lease is, or is not, a concessional lease	planning and land authority	lessee
19	decision under s 230 about the payout amount for a concessional lease	planning and land authority	lessee
20	decision under s 233 to confirm variation of rent after review	planning and land authority	lessee
21	decision under s 233 to set aside variation and substitute another variation of rent after review	planning and land authority	lessee

EXPOSURE DRAFT

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
22	decision under s 238 adjusting rent after reappraisal	planning and land authority	lessee
23	decision under s 240 (1) (d) about amount payable for variation to reduce rent payable under lease to nominal rent	planning and land authority	lessee
24	decision under s 256 (2) about market value of improvements on land	planning and land authority	lessee
25	decision under s 257 (1) to refuse to issue a certificate of compliance	planning and land authority	lessee

Schedule 1

Reviewable decisions and eligible people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
26	decision under s 257 (2) to issue certificate of compliance stating that building and development provision has been partly complied with	planning and land authority	lessee
27	decision under s 257 (2) to issue a certificate of compliance subject to condition that lessee provide security	planning and land authority	lessee
28	decision under s 257 (2) to refuse to issue a certificate of compliance	planning and land authority	lessee

EXPOSURE DRAFT

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
29	decision under s 260 to refuse to consent to the assignment or transfer of a lease or interest in a lease	planning and land authority	lessee
30	decision under s 261 to refuse to authorise payment of prescribed amount for surrendered or terminated lease	planning and land authority	person surrendering lease or whose lease is terminated
31	decision under s 262 (2) to refuse to accept the surrender of a lease, or part of land comprised in lease	planning and land authority	person surrendering lease or part of land comprised in lease

Schedule 1

Reviewable decisions and eligible people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
32	decision under s 262 (2) to accept the surrender of a lease, or part of land comprised in lease, subject to a condition	planning and land authority	person surrendering lease or part of land comprised in lease
33	decision under s 317 to make a controlled activity order other than the order applied for	planning and land authority	applicant for controlled activity order
34	decision under s 317 to refuse to make a controlled activity order	planning and land authority	applicant for controlled activity order
35	decision under s 317 to make a controlled activity order	planning and land authority	person against whom order directed
36	decision under s 321 to make a controlled activity order	planning and land authority	person against whom order directed

EXPOSURE DRAFT

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
37	decision under s 327 (4) to refuse to revoke a controlled activity order	planning and land authority	applicant for revocation
38	decision under s 340 (3) to give a prohibition notice	planning and land authority	person against whom notice directed
39	decision under s 343 (3) to refuse to revoke a prohibition notice	planning and land authority	applicant for revocation
40	decision under s 345 to terminate a lease	planning and land authority	person whose lease is terminated
41	decision under s 346 to terminate a licence	planning and land authority	person whose licence is terminated

Schedule 1

Reviewable decisions and eligible people

column 1 item	column 2 reviewable decision	column 3 decision-maker	column 4 eligible entities
42	decision under s 372 to refuse to exclude part of a relevant document from being made available for public inspection	planning and land authority	applicant for exclusion
43	decision under s 373 to refuse to grant a right to extract minerals	planning and land authority	person applying for grant of right

EXPOSURE DRAFT

Schedule 2 Controlled activities

(see s 303)

column 1 item	column 2 controlled activities	column 3 penalty
1	work affecting a conservation requirement under a heritage direction conducted otherwise than in accordance with an approval	200 penalty units
2	failure to comply with— (a) a lease; or (b) if a lease is granted subject to the lessee entering into a development agreement and the lessee has entered into such an agreement—the development agreement	50 penalty units
3	failure to keep a leasehold clean	50 penalty units
4	undertaking a development for which development approval is required other than in accordance with a development approval	50 penalty units
5	having a building or structure that was constructed or erected without approval required by this Act, chapter 7 (Development approvals)	50 penalty units

Schedule 2**Controlled activities**

column 1 item	column 2 controlled activities	column 3 penalty
6	use of unleased territory land that is not authorised by a licence or permit	50 penalty units
7	managing land held under a rural lease other than in accordance with the land management agreement that applies to it	50 penalty units

EXPOSURE DRAFT

Schedule 3 Management objectives for public land

(see s 281)

column 1 item	column 2 reserve	column 3 management objectives
1	wilderness area	<div><div>1</div>to conserve the natural environment in a manner ensuring that disturbance to that environment is minimal</div> <div><div>2</div>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</div>
2	national park	<div><div>1</div>to conserve the natural environment</div> <div><div>2</div>to provide for public use of the area for recreation, education and research</div>

Schedule 3**Management objectives for public land**

column 1 item	column 2 reserve	column 3 management objectives
3	nature reserve	1 to conserve the natural environment 2 to provide for public use of the area for recreation, education and research
4	special purpose reserve	1 to provide for public and community use of the area for recreation and education
5	cemetery or burial ground	1 to provide for the interment or cremation of human remains and the interment of the ashes of human remains
6	sport and recreation reserve	1 to provide for public and community use of the area for sport and recreation
7	urban open space	1 to provide for public and community use of the area 2 to develop the area for public and community use

EXPOSURE DRAFT

column 1 item	column 2 reserve	column 3 management objectives								
8	lake	<table><tr><td>1</td><td>to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs</td></tr><tr><td>2</td><td>to prevent and control pollution of waterways</td></tr><tr><td>3</td><td>to provide for public use of the lake for recreation</td></tr><tr><td>4</td><td>to provide a habitat for fauna and flora</td></tr></table>	1	to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs	2	to prevent and control pollution of waterways	3	to provide for public use of the lake for recreation	4	to provide a habitat for fauna and flora
1	to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs									
2	to prevent and control pollution of waterways									
3	to provide for public use of the lake for recreation									
4	to provide a habitat for fauna and flora									

Note **Natural environment**—see section 278.

Schedule 4 Development proposals in impact track because of need for EIS

(see s 115 (b))

Part 4.1 Interpretation for sch 4

4.1 Definitions for sch 4

In this schedule:

biodiversity corridor means a river corridor or wildlife corridor identified in the territory plan or in a nature conservation strategy, or action plan, under the *Nature Conservation Act 1980*.

clearing, of native vegetation—see the *Nature Conservation Act 1980*, section 74.

correctional centre—see the *Corrections (Management) Act 2006*, dictionary.

domestic water supply catchment means a domestic water supply catchment identified in the territory plan.

ecological community—see the *Nature Conservation Act 1980*, dictionary.

endangered—see the *Nature Conservation Act 1980*, dictionary.

flora and fauna committee means the Flora and Fauna Committee established under the *Nature Conservation Act 1980*, section 13.

greenhouse gas—see the *Electricity (Greenhouse Gas Emissions) Act 2004*, dictionary.

major road means a road with physically separated carriageways, which has at least 4 lanes (in either direction) and is at least 1km long.

municipal waste—

(a) means—

- (i) domestic waste left for kerbside collection or taken directly to a waste station or transfer station; and
- (ii) waste produced from maintaining the urban environment, for example, from street cleaning, emptying public rubbish bins and cleaning parks; but

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

(b) does not include sewage.

native vegetation—see the *Nature Conservation Act 1980*, section 73.

protected—a species is **protected** if the species is a protected fish, protected invertebrate, protected native animal or protected native plant under the *Nature Conservation Act 1980*.

regulated waste—see the *Environment Protection Act 1997*, schedule 1, section 1.1A.

special protection status, in relation to a species—see the *Nature Conservation Act 1980*, dictionary.

threatening process means a process declared to be a threatening process under the *Nature Conservation Act 1980*, section 38 (4).

vulnerable, in relation to a species—see the *Nature Conservation Act 1980*, dictionary.

Schedule 4
Part 4.1

Development proposals in impact track because of need for EIS
Interpretation for sch 4

Section 4.1

water sensitive urban design means a design in accordance with a water sensitive urban code under the territory plan.

Part 4.2

Development proposals requiring EIS—activities

column 1 item	column 2 development proposal
1	<p>proposal for a linear transport system corridor (for example, construction of new corridor or realignment outside existing corridor) intended to result in a major road, bus way, railway, light rail or tramway, and which is likely to have a significant impact on air quality or ambient noise or cause a significant level of vibration, significant visual intrusion or significant impact on a residential area</p> <p><i>Note</i> An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).</p>

Schedule 4
Part 4.2

Development proposals in impact track because of need for EIS
Development proposals requiring EIS—activities

column 1 item	column 2 development proposal
2	<p>proposal for electricity generation works or distribution corridor, including a proposal including all or any of the following:</p> <ul style="list-style-type: none">(a) transmission line corridor construction, or realignment works, outside an existing corridor that are intended to carry transmission lines with a voltage of 132kV or more;(b) a hydroelectric facility that requires a new dam, weir or inter-valley transfer of water and that will generate 1 megawatt or more of electrical power;(c) a wind farm that will consist of 5 or more turbines or will generate 5 megawatts or more of electrical power;(d) an electricity generating station that will supply 30 megawatts or more of electrical power;(e) an electricity generating station if the temperature of water released from the station into a body of water (other than an artificial body of water) is likely to vary by more than 2°C from the ambient temperature of the receiving water
3	<p>proposal for construction of a dam that will—</p> <ul style="list-style-type: none">(a) be at least 10m high, with a storage capacity of at least 20 000m³; or(b) be at least 5m high, with a storage capacity of at least 50 000m³

column 1 item	column 2 development proposal
4	proposal for construction of an airport or facility for the landing, taking off or parking of planes or helicopters, including a terminal or building for the parking, servicing, maintenance of aircraft, or another area for the maintenance of installations at the airport or facility or movement of aircraft or equipment used at the airport or facility
5	<p>proposal for construction of a sewage treatment plant (other than a septic tank that services residential premises), or sewer reticulation system, designed to service a residential subdivision that—</p> <ul style="list-style-type: none">(a) will be able to process more than 2 500 people equivalent capacity or 750kL each day; or(b) will have capacity to store more than 1kt of sewage, sludge or effluent; or(c) will incinerate sewage or sewage products; or(d) is to be within 100m of a body of water, whether natural or artificial, waterway or wetland; or(e) is to be in an area with a high watertable, highly permeable soils, sodic soils or saline soils; or(f) is to be in a domestic water supply catchment; or(g) is to be within 2km of a residential zone and, taking into consideration the topography and local weather conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, vermin attracted, lights, traffic or waste
6	proposal for construction of a correctional centre

Schedule 4
Part 4.2

Development proposals in impact track because of need for EIS
Development proposals requiring EIS—activities

column 1 item	column 2 development proposal
7	proposal for construction of a petroleum storage facility with a storage capacity greater than 500kL of petroleum products at one time
8	proposal for construction of a permanent public entertainment or sporting venue, including a motor sports facility or venue where motor sports are held, if the venue will— (a) hold at least 2 000 people; or (b) hold less than 2 000 people and be within 1.5km of a residential zone
9	proposal for use of land for landfill if— (a) the intended capacity of the land is more than 5kt each year, or 20kt in total; or (b) the landfill will be— (i) within 100m of a body of water (whether natural or artificial), waterway or wetland; or (ii) in an area with a high watertable, highly permeable soils, sodic soils or saline soils; or (iii) in a domestic water supply catchment; or (iv) within 2km of a residential zone and, taking into consideration the topography and local weather conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, vermin attracted, lights, traffic or waste

column 1 item	column 2 development proposal
10	<p>proposal for the construction of a waste management facility for—</p> <ul style="list-style-type: none">(a) the destruction of waste, including biological, veterinary, medical, clinical, dental, quarantine and municipal waste, by incineration (that is, thermal oxidation); or(b) the sterilisation of clinical waste; or(c) the storage, treatment, disposal, processing, recycling, recovery, use or reuse of regulated waste
11	<p>proposal for a transfer station or material recycling facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, that—</p> <ul style="list-style-type: none">(a) is intended to handle more than 30kt of waste each year; or(b) is to be within 100m of a body of water (whether natural or artificial), waterway or wetland; or(c) is to be within 2km of a residential zone and, taking into consideration the topography and local weather conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, vermin attracted, lights or traffic

Schedule 4
Part 4.2

Development proposals in impact track because of need for EIS
Development proposals requiring EIS—activities

column 1 item	column 2 development proposal
12	<p>proposal for construction of a wastewater treatment plant that will have a capacity to reuse more than 3ML of wastewater (including effluent but excluding stormwater) each year and—</p> <ul style="list-style-type: none">(a) is to be within 100m of a body of water (whether natural or artificial), waterway or wetland; or(b) is to be in an area with a high watertable or highly permeable soils; or(c) is to be in a domestic water supply catchment; or(d) is to be within 2km of a residential zone and, taking into consideration the topography and local weather conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, vermin attracted, lights, traffic or waste

Part 4.3 Development proposals requiring EIS—areas and processes

column 1 item	column 2 proposal
1	<p>proposal that is likely to adversely impact on the conservation status of—</p> <ul style="list-style-type: none">(a) a species or ecological community that is endangered; or(b) a species that is vulnerable; or(c) a species that is protected; or(d) a species with special protection status; or(e) a species or ecological community if the flora and fauna committee has specified criteria for assessing whether the committee should recommend the making of a declaration under the <i>Nature Conservation Act 1980</i>, section 38 (Declaration of species, community or process) in relation to the species or ecological community; or <p><i>Note</i> Criteria are specified under the <i>Nature Conservation Act 1980</i>, s 35. An instrument under that Act, s 35 is a disallowable instrument and must be notified, and presented to the Legislative Assembly, under the Legislation Act.</p> <ul style="list-style-type: none">(f) an endangered species, an endangered population, an endangered ecological community, a critically endangered species, a critically endangered ecological community or presumed extinct under the <i>Threatened Species Conservation Act 1995</i> (NSW), if the potential impact of the proposal will be on the species or community in New South Wales

Schedule 4
Part 4.3

Development proposals in impact track because of need for EIS
Development proposals requiring EIS—areas and processes

column 1 item	column 2 proposal
2	proposal that is likely to contribute to a threatening process in relation to a species or an ecological community
3	proposal involving— <ul style="list-style-type: none">(a) the clearing of more than 0.5ha of native vegetation; or(b) the clearing of native vegetation if the clearing could have a significant impact on land identified in a nature conservation strategy, or action plan, under the <i>Nature Conservation Act 1980</i> or a biodiversity corridor
4	proposal with the potential to have a significant impact on the management objectives for land reserved under section 276 for the purpose of a wilderness area, national park, nature reserve or special purpose reserve
5	proposal with the potential to have a significant impact on— <ul style="list-style-type: none">(a) a domestic water supply catchment; or(b) a water use purpose mentioned in the territory plan, appendix 1 (Water use and catchment policies); or(c) a prescribed environmental value mentioned in the territory plan, appendix 1 of a natural waterway or aquifer
6	proposal that is likely to result in environmentally significant water extraction or consumption, other than a proposal for the use of a stormwater system or other wastewater reuse scheme that is part of a residential subdivision and is a water sensitive urban design

column 1 item	column 2 proposal
7	proposal with the potential to have a significant impact on the heritage significance of a place or object registered, or nominated for provisional registration, under the <i>Heritage Act 2004</i>
8	proposal involving— <ul style="list-style-type: none"> (a) land registered in the register of contaminated sites kept under the <i>Environment Protection Act 1997</i>; or (b) land potentially contaminated in a way that is causing, or is likely to cause, a significant risk of harm to people’s health or the environment
9	proposal likely to result in substantial emissions of greenhouse gases
10	proposal with the potential to adversely affect the integrity of a site where significant environmental or ecological scientific research is being conducted by a government entity, a university or another entity prescribed by regulation
11	proposal for an on-going commercial, aquatic, recreational activity on an urban lake or waterway
12	proposal to vary a lease granted as concessional by surrender and regrant of the lease as a market value lease

Note A development application for a development proposal must include an EIS in relation to the proposal if the impact track applies to it because of a declaration under s 117 (Public Health Minister may make declaration affecting assessment track).

Dictionary

(see s 3)

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

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- AAT
- appoint
- commissioner for surveys
- conservator of flora and fauna
- contravene
- corporation
- document
- domestic partner (see s 169 (1))
- emergency services authority
- entity
- environment protection authority
- exercise
- function
- may (see s 146)
- month
- must (see s 146)
- national capital authority
- national capital plan
- person
- registered surveyor
- registrar-general
- territory land
- the Territory
- under.

Aboriginal object—see the *Heritage Act 2004*, section 9.

Aboriginal place—see the *Heritage Act 2004*, section 9.

act includes omission.

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.

approval holder means a person whose application for development approval has been approved (whether subject to a condition or otherwise) if the approval is in force.

associate, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

authorised person, for part 11.5 (Rectification work)—see section 332 (1).

authority means the Planning and Land Authority established under section 9 (1).

authority website means the website declared under section 377.

background papers, for part 5.3 (Variations of territory plan)—see section 57.

biodiversity corridor, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

building and development provision, for chapter 9 (Leases and licences)—see section 201.

certificate of compliance means a certificate issued under section 257.

certification of occupancy means a certificate issued under the *Building Act 2004*, section 69.

chief executive officer means the chief executive officer of the land agency.

chief planning executive means the Chief Planning Executive appointed under section 20.

clearing, of native vegetation, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, section 74.

code requirements—see section 54 (Codes in territory plan).

code track—see section 104 (2) (a).

Note Div 7.2.2 deals with the code track.

complainant—see section 305 (1) (a).

complaint, for chapter 11 (Compliance), means a complaint under section 305.

concept plan means a concept plan under section 85.

concessional lease—see section 202.

connected, for part 11.8 (Enforcement)—see section 349.

conservation requirement—see the *Heritage Act 2004*, dictionary.

consolidation, for chapter 9 (Leases and licences)—see section 201.

consultation comments, for part 5.3 (Variations of territory plan)—see section 61 (1) (b).

consultation notice, for part 5.3 (Variations of territory plan)—see section 61 (1).

consultation period, for part 5.3 (Variations of territory plan)—see section 61 (1) (a).

controlled activity—see section 303.

controlled activity order means an order made under part 11.4.

correctional centre, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Corrections (Management) Act 2006*, dictionary.

corresponding plan variation, for part 5.3 (Variations of territory plan)—see section 57.

custodian, for chapter 10 (Management of public land)—see section 293.

custodianship map means the map created and notified under section 294.

deal with a lease, for chapter 9 (Leases and licences)—see section 201.

deciding a development application means approving (whether subject to a condition or otherwise) or refusing the development application.

decision-maker, for chapter 12 (Review of decisions)—see section 369.

declared site—see the *Tree Protection Act 2005*, dictionary.

defined period, for part 10.6 (Leases for public land)—see section 295.

designated area—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 4.

development, in relation to land—see section 7.

development application means an application in relation to a development proposal made under chapter 7 (Development approvals).

development approval means development approval under chapter 7 (Development approvals).

development code—see section 54 (4).

development proposal—

- (a) means a proposal for development, whether in a development application or otherwise; or
- (b) for division 7.2.5 (Development proposals not in development table)—see section 123.

development table, for a development or proposal, means the development table in the territory plan that covers the zone in which the development or proposal is to take place (see s 53).

discharge amount, for division 9.7.2 (Exceptions for rural leases)—see section 244.

domestic water supply catchment, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

draft plan variation—see section 58.

draft scoping document, for chapter 8 (Environmental impact statements and inquiries)—see section 187 (2) (b).

ecological community, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, dictionary.

EIS—see section 185.

eligible entity, for chapter 12 (Review of decisions)—see section 369.

endangered, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, dictionary.

environmental impact statement, for chapter 8 (Environmental impact statements and inquiries), means an EIS (see s 185).

estate development plan means an estate development plan under section 86.

exempt, in relation to a development proposal, means the proposal is exempt from requiring development approval under a development table or by regulation.

flora and fauna committee, for schedule 4 (Development proposals in impact track because of need for EIS), means the Flora and Fauna Committee established under the *Nature Conservation Act 1980*, section 13.

formal error means—

- (a) a clerical error; or
- (b) an error arising from an accidental slip or omission; or
- (c) a defect of form.

future public land, for part 10.6 (Leases for public land)—see section 295.

future urban area means an area of territory land identified in the territory plan for future urban development.

general code—see section 54 (5).

greenhouse gas, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Electricity (Greenhouse Gas Emissions) Act 2004*, dictionary.

heritage direction—see the *Heritage Act 2004*, section 62.

holding period, for division 9.7.2 (Exceptions for rural leases)—see section 244.

impact track—see section 104 (2) (c).

Note Div 7.2.4 deals with the impact track.

improvement, for part 9.8 (Leases—improvements)—see section 249.

in an assessment track—a development proposal is ***in*** an assessment track if the assessment track applies to the proposal.

inquiry means an inquiry into an EIS established under section 199.

inspector means a person appointed under section 350.

land agency means the Land Development Agency established under section 30.

land agency board means the governing board of the land agency.

land agency board member means a member of the land agency board.

land management agreement means an agreement under section 245.

Note A reference to an instrument (including a land management agreement) includes a reference to the instrument as originally made and as amended (see Legislation Act, s 102).

lease, for chapter 9 (Leases and licences)—see section 201.

leasehold, of a lessee, means the land held under the lease.

lessee—

- (a) for chapter 9 (Leases and licences)—see section 201;
- (b) for part 9.8 (Leases—improvements)—see section 249.

major road, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

management objectives, for chapter 10 (Management of public land)—see section 278.

market value, for chapter 9 (Leases and licences)—see section 201.

market value lease means a lease other than a concessional lease.

material detriment—see section 374.

merit criteria—see section 54 (1) (b) (Codes in territory plan).

merit track—see section 104 (2) (b).

Note Div 7.2.3 deals with the merit track.

native vegetation, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, section 73.

natural environment, for schedule 3 (Management objectives for public land)—see section 278 (6).

new application, for division 7.3.10 (Reconsideration of development applications for approval)—see section 173 (2).

nominal rent lease, for chapter 9 (Leases and licences)—see section 201.

occupier, for part 11.8 (Enforcement)—see section 349.

offence, for part 11.8 (Enforcement)—see section 349.

original application, for division 7.3.10 (Reconsideration of development applications for approval)—see section 173 (1) (a).

original decision, for division 7.3.10 (Reconsideration of development applications for approval)—see section 173 (1) (a).

plan means the territory plan under section 45.

planning and land authority means the Planning and Land Authority established under section 9 (1).

planning report—see section 89.

planning strategy means the planning strategy under section 97.

plan of management, for chapter 10 (Management of public land), means a plan of management under part 10.4.

policy objectives, for a zone, means the policy objectives in the territory plan for the zone (see s 50 (1) (b) and s 52).

precinct code—see section 54 (3).

premises, for part 11.8 (Enforcement)—see section 349.

prohibited—

- (a) development is ***prohibited*** if the development is prohibited under the relevant development table; and
- (b) a development proposal is ***prohibited*** if any part of the development proposed by the proposal is prohibited.

proponent—

- (a) for a development proposal, for chapter 8 (Environmental impact statements and inquiries), means the person proposing the proposal; or
- (b) for part 10.4 (Plans of management for public land)—see section 279.

protected, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

provision of a lease, for chapter 9 (Leases and licences)—see section 201.

public consultation period, for a development application—see section 143 (5).

public land means land identified by the territory plan as public land.

publicly notifies, for chapter 7 (Development applications)—see section 140.

public register means the register kept by the planning and land authority under section 26.

rectification work, for part 11.5—see section 329.

registered lease, for chapter 9 (Leases and licences)—see section 201.

registered proprietor, for chapter 9 (Leases and licences)—see section 201.

registered tree—see the *Tree Protection Act 2005*, section 9.

regulated waste, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Environment Protection Act 1997*, schedule 1, section 1.1A.

relevant code, for a development proposal, means a code that the relevant development table applies to the proposal.

relevant code requirements, for a development proposal, means the code requirements in each code that the relevant development table applies to the proposal.

relevant development table, for a development proposal, means the development table that applies to the proposal.

rental lease, for chapter 9 (Leases and licences)—see section 201.

representation—

- (a) about a development application, means a representation made under section 143; or
- (b) for chapter 8 (Environmental impact statements and inquiries)—see section 183.

representative Aboriginal organisation—see the *Heritage Act 2004*, section 14.

residential lease, for chapter 9 (Leases and licences)—see section 201.

reviewable decision—see section 369.

rural lease, for chapter 9 (Leases and licences)—see section 201.

SEA means strategic environmental assessment.

sewage—see the *Water and Sewerage Act 2000*, dictionary.

show cause notice—

- (a) for division 11.4.1 (Controlled activity orders on application)—see section 316 (3);
- (b) for division 11.4.2 (Controlled activity orders on authority's initiative)—see section 319 (2).

special protection status, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

statement of planning intent—see section 15 (Statement of planning intent).

statement of strategic directions means the statement of strategic directions in the territory plan (see s 50 and s 51).

strategic environmental assessment—see section 91.

structure plan means a structure plan under part 5.5 that is part of the territory plan.

subdivision, for chapter 9 (Leases and licences)—see section 201.

sublease, for chapter 9 (Leases and licences)—see section 201.

sublessee, for chapter 9 (Leases and licences)—see section 201.

sustainable development—see section 8.

tax includes duty, fee or charge.

territory plan means the territory plan under section 45.

territory plan maps—see section 50 (1) (e).

the inter-generational equity principle—see section 8.

the precautionary principle—see section 8.

tree management plan—see the *Tree Protection Act 2005*, dictionary.

undertaken, for part 9.8 (Leases—improvements)—see section 249.

variation, of a plan of management for chapter 10 (Management of public land)—see section 274.

vulnerable, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

water sensitive urban design, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

zone means a zone identified in a territory plan map.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

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