2005

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT) AMENDMENT BILL 2005

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Planning
Mr Simon Corbell MLA

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Land (Planning and Environment) Amendment Bill 2005

Background

A definition for concessional lease does not currently appear in the *Land (Planning and Environment) Act 1991* (Land Act). A definition for concessional lease has for some years existed in several provisions of the *Land (Planning and Environment) Regulation* 1992 (the Regulation), for the purposes only of determining the change of use charge to be applied when varying a particular class of leases. Further, whilst it does not define a concessional lease, Disallowable Instrument DI 2003-193 – Land (Planning and Environment) Section 167 Leases Determination 2003 - describes a particular class of leases restricted in their dealings by section 167 of the Land Act. While regulating different aspects of lease administration, the approaches in the Regulation and the disallowable instrument are almost identical, and draw on the concept of a lease granted for “less than market value”.

In practice, the administration of leases according to whether they were “granted for less than market value” has extended into all areas of lease administration, without any clear statutory basis. The practice has contributed greatly to a lack of consistency and transparency in the administration of the leasehold estate. The term “concessional lease” as a particular class of leases and the regime for their administration, are a product of the Land Act, which commenced on 2 April 1992. However, the grant of leases for less than market value, and their administration, have occurred since the inception of ACT leasehold in accordance with, and to meet a variety of past government policy objectives. Some of the leases that were granted for less than market value were never intended to be subject to the restrictions associated with concessional lease administration. The practice has been to attempt to modify the application of the restrictions in some cases, to exclude certain classes of leases, but the transparency of those exclusions has been lacking. Clear exclusions have therefore been set out in this legislation.

The Bill takes an important first step in clarifying the understanding of what is a “concessional lease”, by providing a definition of general application for those leases, and by identifying exempt classes of leases.

Clause Notes

Clauses 1, 2 and 3 provide for the name and commencement of the Act.

Clauses 4 and 5 insert into the Act a definition of “concessional lease”. The definition is based on the definition previously appearing under section 22 of the Regulation, for the purpose of calculating the change of use charge payable in respect of the variation of a concessional lease. The definition also provides that the Regulation may specify leases granted at less than market value that are not taken to be concessional leases.

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Schedule 1 inserts into the Regulation a new section 10A, which specifically excludes the following from the definition of concessional lease:

(a) Residential leases have been, and continue to be, granted and administered as leases granted for full market value, and should not be subject to restrictions as concessional leases. This includes an existing class of residential leases that were granted to the public housing tenants at 80% of their value in accordance with the then government policy;

(b) Many rural leases were, and continue to be, granted for less than market value, however, these leases are appropriately regulated under the rural lease policy;

(c) Land occupied and managed by a Territory owned corporation, or its predecessor prior to self-government, that since self-government has been granted under a lease to that Territory owned corporation at no cost. The grant of a lease in this circumstance merely formalised existing responsibility of an agency for management of a government land asset and was not intended to create a class of concessional lease. Under current arrangements, any new lease granted to a Territory owned corporation must be paid for at market value.

(d) Individual leases granted following the surrender of a head lease under the private sector land development program, or a joint venture under the government sector land development program, do not require payment for the individual leases. Market value is paid by the land developer at the time the head lease is granted and reflects the requirement for the land developer to provide infrastructure for subsequent subdivision of the land into individual leases;

(e) Rental leases for commercial purposes, including industrial and business purposes, granted since the option for land rent was re-introduced on 1 January 1974, when the land rent commitment has been reduced to a nominal rent by payment of an amount in accordance with government policy, in force at the time of the payment. (For example, the policy announcement of 9 June 1980 by the then Minister, Mr Bob Ellicott.) Currently, land rent may only be paid out in accordance with the criteria of disallowable instrument (DI 2003-221) under section 186 of the Land Act.

Amendment of the Regulation includes deletion of redundant clauses and clause renumbering.

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