2006

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT BILL 2006

EXPLANATORY STATEMENT

Presented by
Mr Simon Corbell MLA
Minister for Planning

Planning and Development Bill 2006

Explanatory Notes

GENERAL OUTLINE

Objective of the legislation – a simpler, faster and more effective planning system

The Bill is intended to make the Australian Capital Territory's (ACT's) planning system simpler, faster and more effective. The Bill will replace the existing *Land (Planning and Environment) Act 1991* (the Land Act) and the *Planning and Land Act 2002*.

The objective of the Bill is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT in a way that is consistent with the social, environmental and economic aspirations of the people of the ACT, and which is in accordance with sound financial principles.

The most significant change under the Bill is simplified development assessment through a track system that matches the level of assessment and process to the impact of the proposed development. As well as being simpler, more consistent, and easier to use, this system is a move towards national leading practice in development assessment.

The definition of development is expanded under the Bill. Development is defined in clause 7 as more than just a construction activity or building. It is also the use, commencement of use or change of use of land or buildings. Subdivision is also defined as development. These changes, plus others in the Bill, ensure that leasing and development assessment systems can be more effectively integrated.

Reasons for the Bill

The Government launched the Planning System Reform Project in December 2004 with the aim:

> *to create a contemporary planning and land administration system, processes and practices that will provide greater certainty, clarity and consistency and which is flexible, timely, less repetitious and administratively manageable.*

The Government wishes to reform the planning system to save homeowners and industry time and money and give them greater certainty about what they need to do if they require development approval.

People using the ACT's current planning system have found some aspects slow, cumbersome, inconsistent and confusing. Simple planning proposals often require the same long application and approval processes and timeframes as complex proposals. Low impact proposals often attract the same level of environmental impact assessment as higher impact proposals.

The new system will have less red tape and more appropriate levels of assessment, notification and appeal rights. This will make it easier to understand what does and does not need approval, what is required for a development application and how it will be assessed.

A central part of the Bill is simplified development assessment through a track system that matches the level of assessment and process to the impact of the proposed development.

Ways in which the objectives are to be achieved

The proposed reforms are:

* More developments that do not need development approval
* Improved procedures for notification of applications and third party appeal processes that reduce uncertainty
* Clearer assessment methods for different types of development
* Simplified land uses as set out in the territory plan
* Consolidated codes that regulate development
* Clearer delineation of leases and territory plan in regulating land use and development
* Enhanced compliance powers.

Alternatives to the Bill

Retaining or amending the current legislation is not tenable in view of broad demands for changes to the system and the inability of the existing system to achieve Government policy. This is particularly in relation to achieving sustainable development, streamlining approvals and cutting red tape.

Consultation

Since 2004 there has been extensive consultation with all stakeholder groups. Key concepts and issues have been discussed thoroughly with the business community, environmental groups and professional organisations. The Government's initial consultation invited comments on a directions paper and associated technical papers relating to four areas of planning reform. More than 60 stakeholders made a submission and over 260 comments were documented. The Government has reviewed these comments, as well as those of the former Planning and Land Council and an expert reference group, and decided which direction the reforms should take. These reforms are reflected in the Bill. There was also extensive consultation in relation to the Exposure Draft Planning and Development Bill 2006. Stakeholder workshops and public briefings, through the community councils, were conducted by the ACT Planning and Land Authority (the authority) between 13 July and 31 August 2006. Twenty-seven submissions on the Bill were received from stakeholders and considered. In addition, comments were recorded from meetings and also were considered. The Planning and Environment Committee in its Report No. 22 of 2006 "Exposure Draft Planning and Development Bill" made 48 recommendations in relation to the exposure draft of the Bill, primarily focused on the refinement or clarification of particular provisions, and responding to key matters raised by

stakeholders during its inquiry. In addition, the Committee suggested minor and technical amendments to the bill as detailed in Table 1 of its report. Significant refinements were made to the Bill as a result of the Committee's recommendations.

A Summary of the Chapters of the Bill

Chapter 1 deals with the administrative elements of the Bill.

Chapter 2 describes the object of the Bill and provides a definition of development to include the use, commencement of use or change of use of land or buildings.

Chapters 3 and 4 establish and set out the functions, roles and responsibilities of the Planning and Land Authority (the authority) and the Land Development Agency.

Chapter 5 establishes the Territory Plan as the principal instrument for regulating land use and development. The framework for the plan is set out. This chapter also describes when a formal variation to the Territory Plan is required and how this is done. The Territory Plan will define the application of the assessment track system and categories of use and development.

The Bill provides for two periods of interim effect of draft plan variations – (1) from the initial consultation to submission to the Minister and (2) from submission to the Minister to final approval.

The Territory Plan will contain a Statement of Strategic Directions that gives strategic planning principles covering matters of national, regional and Territory interest and sustainability principles. The strategic directions should also promote the Planning Strategy (see Chapter 6). This is in addition to reflecting the Minister's Statement of Planning Intent (see clause 15), which sets out the principles that govern planning and land development in the ACT.

There is a new requirement that the authority must consider at least once every 5 years whether the Territory Plan should be reviewed.

Chapter 6 includes a new requirement for the Government to prepare a long term Planning Strategy for the ACT.

Chapter 7 sets out the process for development applications, Ministerial call-in powers for development applications, and offences relating to undertaking prohibited development, development without approval and development that breaches conditions of development. The development application process will include the assessment track system of code, merit and impact assessment and prohibited and exempt development.

Chapter 8 complements the information about the impact assessment track in Chapter 7 by defining Environmental Impact Statements (EIS) and describing the process for preparing them.

Chapter 9 sets out the process for leasehold administration for the Territory.

Management of public land, including wilderness areas, national parks, nature reserves, special purpose reserves, urban open space, cemeteries, lakes, sport and recreational areas is set out in Chapter 10. Management objectives for public land are detailed in Schedule 3 of the Bill.

Chapter 11 deals with compliance, which includes a range of measures to investigate complaints and take action on "controlled activities", which are activities itemised in Schedule 2 of the proposed Act. There is a new statutory process for complaints detailed in the Bill.

Chapter 12 sets out the enforcement procedures under the Bill including the powers of inspectors to obtain search warrants, enter premises and seize things. There is provision for the authority to require a person to provide information or a document containing information reasonably required by the authority for the administration or enforcement of the proposed Act.

Chapter 13 allows certain people who are unhappy with a decision of the authority to appeal to the Administrative Appeals Tribunal (the AAT).

Chapters 14 and 15 set out a number of miscellaneous and transitional arrangements.

The relationship between the Planning Strategy, the Statement of Planning Intent, the Statement of Strategic Directions, the Territory Plan and the National Capital Plan.

The Planning Strategy (refer Chapter 6) is intended to be the highest-level document setting out the long term planning strategy for the ACT as envisaged by the Government of the day. It is a strategic document and, as such, is not a part of the Territory Plan and has no relevance to development assessment or court decisions. The document has two key functions. Firstly, it will facilitate community debate on the Government's approach to long term planning and as such improve the accountability of the Government's position. Secondly, the document will have one and only one legal function, that is, as a document that must be considered when looking at proposals to vary the Statement of Strategic Directions of the Territory Plan (refer clause 51). In this sense the Planning Strategy provides context and guidance to the preparation of the more concrete, detailed Statement of Strategic Directions.

The Statement of Planning Intent (refer clause 15) is the vehicle for the Minister to give overall directions to the authority on planning principles and guide the authority in its interpretation of the Territory Plan and operations. This document has a more specific audience (the Planning and Land Authority) and a more specific role than the whole of Government Planning Strategy.

The Statement of Strategic Directions is a part of the Territory Plan. It is the vehicle for the translation of the high level political goals of the Planning Strategy into the more precise, more detailed territory plan. This instrument, unlike the Planning Strategy, does apply to development assessment decisions and court decisions (for impact assessable matters). It sets out high level planning considerations for the long term but in a more concrete, detailed manner than the Planning Strategy. It will

contain requirements that are sufficiently specific to guide individual development assessment decisions.

The Territory Plan sets out the planning policy and rules that must be applied by the authority and Territory in its day-to-day decisions.

The requirement to consider the Planning Strategy when assessing draft variations to the Statement of Strategic Directions in the Territory Plan does not override the obligation for the Territory Plan to give effect to its objects in a way not inconsistent with the National Capital Plan (clause 47 of the Bill which mirrors s25 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth)) (the PALM Act). In addition, the rule that the Territory Plan "has no effect to the extent that it is inconsistent with the National Capital Plan …" remains in place (s26 of the PALM Act).

Furthermore, the provisions of the Bill are subject to section 11 of the PALM Act which provides that an enactment that is inconsistent with the National Capital Plan has no effect to the extent of the inconsistency but an enactment shall be taken to be consistent with the National Capital Plan to the extent that it is capable of operating concurrently with the National Capital Plan. Under section 11(2) the Commonwealth, a Commonwealth authority, the Territory or a Territory authority shall not do any act that is inconsistent with the National Capital Plan.

Offences in the Bill

The Bill establishes the offences of undertaking prohibited development, development without approval and development that breaches conditions of development approval. Penalties for these offences are on a sliding scale, depending on whether or not the offending action was intentional, reckless or negligent. Penalties are set at levels commensurate with other Australian jurisdictions.

Some offences under the *Criminal Code 2002* (the Criminal Code) are also applicable. For instance, Part 3.8 of the Criminal Code has offences relating to impersonating a public official or obstructing, hindering, intimidating or resisting a public official in the exercise of his or her functions.

Some offences relating to undertaking prohibited development and development without approval are strict liability offences. In addition, there are strict liability offences relating to failing to abide with a controlled activity order. There are also other strict liability offences. The strict liability offences are in clauses 152, 193, 194, 196, 354, 360, 371, 381, 386 and 387.

The use of strict liability was carefully considered in developing the offences. The rationale for their inclusion was to protect the health and safety of the public, or to protect the environment.

A strict liability offence under section 23 of the Criminal Code means that there are no fault elements for any of the physical elements of the offence. That means that conduct alone is sufficient to make the defendant culpable. However, the mistake of

fact defence expressly applies to strict liability as does the other defences in Part 2.3 of the Criminal Code. Section 23(3) of the Criminal Code provides that other defences may still be available for use in strict liability offences. Defences such as intervening conduct or event (see section 39 of the Criminal Code) are available.

Strict liability offences do not have a mental element, termed ‘mens rea’. However, the actus reus, the physical actions, do have a mental element of their own, for example, voluntariness. For that reason, the general common law defences of insanity and automatism still apply as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act. Strict liability offences do not lead to a reversal in the onus of proof. Such offences require the prosecution to prove the elements of the offence beyond reasonable doubt. It is then open to a defendant to raise defences and to bear an evidential burden only as to their existence. The prosecution must then disprove the existence of any defence beyond reasonable doubt. As the burden of proof on a defendant is an evidential burden, the defendant will only have to point to evidence that suggests a reasonable possibility that the defence applies.

Strict liability offences are an efficient and cost effective deterrent for breaches of regulatory provisions. They are appropriate where the authority is in a position to readily assess the truth of a matter and that an offence has been committed. They can be dealt with by infringement notice which is a cheaper and less time consuming alternative to a court prosecution. Strict liability is beneficial where offences need to be dealt with expeditiously to ensure confidence in the regulatory scheme. For example, if a house is built with a second story without approval the public would expect effective and quick action by the authority to rectify the situation.

The necessity to prove intent affects the level of resources needed to investigate and prosecute. An effective enforcement regime is crucial for the authority to fulfil its role and responsibilities as the regulator of land development. A widely publicised instance of the authority’s inability to prosecute could seriously erode public confidence in the integrity of the supervisory scheme. Evidence of intention or recklessness is often difficult to obtain in the absence of admissions or independent evidence. This in turn can reduce the effectiveness of using the prospect of prosecutions as a deterrent to impugned behaviour.

Strict liability offences reduce risks to the community. An adequately deterrent scheme to ensure development takes place only as approved by the authority reduces the risk of the community being affected by bad and/or inappropriate development.

The provision for strict liability offences is consistent with recently enacted ACT legislation. The *Heritage Act 2004* and *Tree Protection Act 2005* both provide for strict liability offences. Strict liability offences are also used in other jurisdictions including the Commonwealth.

A tiered system of penalties can improve enforcement, provide flexibility and increase the range of regulatory options. There is an option to proceed under a fault liability limb of an offence if there is adequate evidence of the requisite mental element or

under a strict liability limb where evidence of such intent is insufficient. Lower penalties for strict liability offences provide a safeguard for those affected.

Strict liability is justified where a person agrees to conditions attached to an approval and where public confidence in the merit of such an instrument may be undermined by a person's failure to comply with them. A strict liability offence for not building in accordance with an approval is easily justified. The lessee/builder/developer is given a copy of the conditions as part of the approval process. The conditions are standard conditions and written in plain English and are unambiguous. The person involved is aware that the work they wish to carry out requires approval, and has sought and being given the approval and its conditions. If they then carry out work contrary to the conditions then an offence is easily made out.

The Bill has not included the defence of reasonable excuse in the offence provisions. The Land Act had this defence in relation to the offence of undertaking development otherwise than in accordance with an approval. What constitutes a reasonable excuse largely depends on the purpose of the offence provision as well as the circumstances of the particular case. This means there is a high level of uncertainty in the application of the defence. Furthermore, the defence is unnecessary because the excuses it is intended to cover are now covered by the defences contained in Part 2.3 of the Criminal Code. It was considered that the general defences in Part 2.3 would cover the excuses that were intended to be covered by the reasonable excuse provisions in the Land Act. For this reason, the defence was not included in the Bill.

A penalty unit is defined in the *Legislation Act 2001* (the Legislation Act) and is currently $100.

Human rights issues

The strict liability offences could be argued to trespass unduly on personal rights and liberties and be a limitation on the right to be presumed innocent under section 22 of the *Human Rights Act 2004* (the HRA). However, it is considered it is permissible as a reasonable limitation under section 28 of the HRA which provides that human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society. In effect, s28 requires that any limitation or restriction of rights must pursue a legitimate objective and there must be a reasonable relationship of proportionality between the means employed and the objective sought to be realised.

To facilitate consistency with the HRA, strict liability offences only impose an evidential burden on the defendant. Strict liability offences do not lead to a reversal in the onus of proof. Such offences require the prosecution to prove the elements of the offence beyond reasonable doubt. It is then open to a defendant to raise defences and to bear an evidential burden only as to their existence. An evidential burden means that a defendant need only point to evidence that suggests a reasonable possibility that the matter in question exits. It is lower than a legal burden and is less of a limitation on the presumption of innocence. The prosecution must then disprove the existence of any defence beyond reasonable doubt.

Furthermore, as stated above, if strict liability applies, the defence of mistake of fact and other defences under the Criminal Code such as intervening conduct or event (s39), may be available.

Another indication that the strict liability offences are a reasonable limitation under section 28 of the HRA is the low maximum penalty of $6,000 (60 penalty units) and no imprisonment.

Of necessity the application of the HRA in circumstances such as these does require some value judgments to be made. A judgment must be made about the value to society of the presumption of innocence as opposed to the protection of the community from development with unacceptable impacts on neighbours and the general community, the protection of the environment, and the protection of human health and safety. In assessing whether rights have been trespassed upon within permissible limits it is necessary to consider the objective of the offence and whether the trespass is proportionate to the objective served by the offence provision.

One of the biggest issues facing not just Australia but the world at this time is the destruction of the environment. Recent publicity has made dire predictions about the future if immediate action is not taken to ameliorate the continuing degradation of the environment.

The Planning and Land Authority must be provided with an adequately deterrent scheme to ensure the protection of the community and the environment. It is also crucial that the authority have the ability to act quickly and decisively, particularly in circumstances where delay may result in irreparable damage.

The objective of the legislation can only be achieved by removing the need for intent by way of strict liability offences because the purpose of the provisions is not to punish wrongdoing but to protect the community.

It is considered that the limitation in the strict liability offences serves a legitimate objective, it is rationally connected to achieving that objective and it is the least restrictive means of achieving that objective.

There is no rationale for differentiating between building professionals and the general public. As stated above, defences are available under the Criminal Code. There have been many instances where the authority has needed to act against do-it-yourself home builders in relation to unapproved structures. These structures have, on occasions, been large, obtrusive and dangerous. One instance was the erection of a large cubby house above the roof line and overlooking the neighbour’s house. Other instances are the erection of carports, garages, pergolas and workshops without approval.

There is a strong community interest in affording protection against such activities. The seriousness of undertaking prohibited development or development without approval cannot be underestimated even if it is undertaken by do- it- yourself home builders. Nevertheless, the Bill has provided the protection of a defence to a prosecution for the strict liability offence of undertaking development without approval under clause 193(4). A person can defend a prosecution under this clause if the

person can establish he/she took reasonable steps to find out or inquire whether the development required development approval before undertaking the development.

Do- it- yourself home builders are unlikely to contemplate development of a type that is prohibited, for example, they are not likely to build a factory. They are, therefore, unlikely to offend against clause 194 of the Bill and be caught by the strict liability offence. On the other hand, the high impact nature of prohibited development means that the authority needs the full range of penalty tools, including strict liability.

This is no justification in distinguishing between professionals and do-it-yourself home builders in relation to clause 196 of the Bill. This is because the home builders, like the professionals, will be aware of the conditions of the development approval because they are given written notice of the approval and conditions. Strict liability is justified where a person agrees to conditions attached to an approval and where public confidence in the merit of such an instrument may be undermined by a person's failure to comply with them.

Finally, community consultation in relation to the Bill indicated that the community, in general, wants the legislation to provide for enhanced compliance.

Financial implications

Costs of implementation will be met within existing resources. There is an adverse impact on Territory revenue as a result of a loss of development approval fees due to increased exemptions. This is offset by general benefits to the community from streamlined planning and development assessment systems.

NOTES ON CLAUSES

Chapter 1 Preliminary

Chapter 1 deals with the administrative elements of the proposed Act.

Clause 1 provides for the title of the Act.
Clause 2 stipulates that the proposed Act commences on a date fixed by the Minister by written notice.
Clause 3 explains that the dictionary contained at the end of the Act is a part of the Act, and provides notes to explain how the definitions are structured and how they apply to the Act.
Clause 4 explains that the "notes" that appear in the Act are aids to interpretation but not part of the Act.
Clause 5 explains that other legislation applies in relation to offences against the proposed Act. The notes in clause 5 explain the application of the Criminal Code and Legislation Act to the Act.

Chapter 2 Object and important concepts

Chapter 2 outlines the fundamental object and concepts that provide the framework for the operation of the proposed Act.

The proposed Act includes a definition of development that will apply equally to all parts of the Act. The definition of development includes:
1. using the land or a building or structure on the land;
2. beginning a use; and
3. changing a use.

This definition will enable the territory plan and development assessment system to properly assess the impacts of a development proposal and for appropriate conditions to be placed on the continued operation of that development. Compliance is also enhanced.

The definition of development applies to both existing and new leases and permits a more efficient, better-coordinated assessment system within the planning and land authority - one that does not require parallel, separate processes for lease administration and development assessment.

The Government has put in place significant safeguards to protect the leasehold system and in particular to preserve existing lease rights.

An approval to undertake a use that is permitted by a lease (or licence or permit) will only be necessary where there is building work associated with undertaking that use and that work of itself requires approval. This applies to existing and new leases. The impact of undertaking a use in the manner proposed in a development application can be assessed and conditioned.

Rights to use land, a building or structure granted under pre July 2007 leases are not affected and may continue, including rights under a lease that is renewed either prior to its expiry or within 6 months of its expiry. A development approval is not required to continue to exercise those rights after the start of the system under the proposed

Act or to change from one authorised use to another. However, a development approval will be necessary if there is new building work associated with undertaking that use and that work of itself requires approval.

Uses (permitted on a lease, licence or permit) that were authorised by a development approval or exemption and have commenced - cannot become prohibited by a change in the territory plan. If a use is exempt when it commences and approval is subsequently required under the territory plan, the use remains lawful and approval will not be required.

If a use has not commenced and the territory plan prohibits that use it will still be possible to commence that use but the impact assessable track will apply. This principle applies only to use that is permitted by a lease. It does not apply to uses permitted by a licence or permit.

Uses on existing and new leases that are lawfully commenced (under an approval or exemption) remain lawful indefinitely (subject to any time limits on the approval in exceptional circumstances - refer below) and cannot be abandoned. In particular, this means that the use remains lawful notwithstanding that:

(a) the use is interrupted for a period on one or more occasions
(b) the relevant lease is sold or subject to other dealing
(c) the lease is renewed or is renewed late (leases can be renewed up to six months after the expiry of the original lease)

There is capacity for development approval of the use to be time limited. This provision will be used in exceptional circumstances for projects of limited duration, for example, a quarry.

Licences are treated in the same way as leases except that a new approval to undertake a use will be needed (unless an exemption applies) for a licence when it is renewed.

Clause 6 identifies the object of the proposed Act to provide a planning and land system that contributes to the orderly and sustainable development of the ACT in a way that is consistent with the social, environmental and economic aspirations of the people of the ACT, and which is in accordance with sound financial principles. The note explains that the Act, like all Territory Acts, has no effect to the extent that it is inconsistent with the national capital plan, but is taken to be consistent with the national capital plan to the extent that it can operate concurrently with it.

Clause 7 defines ***development*** as more than just a construction activity or a building. It is also using the land, or a building or structure on the land; beginning a new use of the land, or a building or structure on the land; change of use of the land or buildings; subdividing or consolidating land; varying a lease, including concessional leases; and, putting up, attaching or displaying a sign or advertising material otherwise than in accordance with a licence or permit. The assessment track system and the territory plan will apply to commencement of use as well as other forms of development. The track system will determine the level of assessment that is to apply just as it determines the assessment that applies to other development.

Clause 8 S*ustainable development* is defined here and means the effective integration of social, economic and environmental factors in decision-making

processes. ***The inter-generational equity principle*** and ***the precautionary principle*** are also defined.

Chapter 3 The planning and land authority and chief planning executive

This chapter, as well as chapter 4, set out the functions, roles and responsibilities of the authority and the land development agency. This includes the authority's responsibilities regarding the territory plan and spatial planning, planning and land development, land information (including the cadastre), lease management, regulating the building industry, and public education. The authority must keep a public register listing development applications and decisions about them.

Part 3.1 The planning and land authority

Clause 9 The planning and land authority is established as a body corporate. It must have a seal. The authority is an agent of the territory. The authority is constituted by the chief planning executive.
Clause 10 The territory is bound by the things done by the chief planning executive in exercising a function of the authority in the name of, or for, the authority.

Part 3.2 Functions of the planning and land authority

Clause 11 lists the functions of the authority. The authority is to:

(a) prepare and administer the territory plan;
(b) continually review the territory plan and propose amendments as necessary;
(c) plan and regulate the development of land;
(d) advise on planning and land policy, including the broad spatial planning framework for the ACT;
(e) maintain the digital cadastral database under the *Districts Act 2002*;
(f) make available land information;
(g) grant, administer, vary and end leases on behalf of the Executive. The authority is authorised to grant, on behalf of the Executive, leases the Executive may grant on behalf of the Commonwealth.
(h) grant licences over unleased territory land;
(i) decide applications for approval to undertake development;
(j) regulate the building industry;
(k) make controlled activity orders under part 11.3 (Controlled activity orders) and take other compliance and enforcement action under this Act and other territory laws;
(l) provide planning services within or outside the ACT;
(m) review its own decisions;
(n) provide opportunities for community consultation and participation in planning decisions;
(o) promote public education and understanding of the planning process.

Other functions may be given to the authority under the proposed Act or another territory law or Commonwealth law.

The authority must exercise its functions in a way that, as far as practicable, gives effect to "sustainable development" (defined in clause 8) and taking into

consideration the statement of planning intent. The note explains that the authority must not do anything inconsistent with the territory plan (see clause 49) or the national capital plan (see the PALM Act, s 11).

Clause 12 The authority is to comply with any directions given to it under the proposed Act or another territory law.

Part 3.3 Operations of planning and land authority

Clause 13 The Minister may give written directions to the authority:

(a) about general policies to be followed by the authority; or

(b) requiring the authority to revise the territory plan or a provision of it or review the plan.

Subclause (2) requires the Minister, before giving a direction, to tell the authority about the proposed direction and allow the authority an opportunity to comment on the proposed direction. The Minister must consider any comments made by the authority about the proposed direction.

A copy of the direction is to be presented in the Legislative Assembly within 6 sitting days after it is made. Also, if the copy will not be presented to the Legislative Assembly before the end of the period of 10 working days after the direction is given to the authority, the Minister must give a copy to the members of the Assembly before the end of the 10-day period. If these requirements are not met, 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 a 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. A direction is a notifiable instrument.

Clause 14 The Legislative Assembly may recommend that the Minister give the authority a direction as stated in a resolution. The Minister must consider the recommendation and either give the direction or tell the Legislative Assembly it does not propose to direct the authority and explain why. Subclause (3) provides that following a recommendation of the Assembly, the Minister may give a direction in accordance with that resolution or as modified by the Minister.

Clause 15 The Minister may give the authority a written statement (the ***statement of planning intent***) which is intended to provide overall directions to the authority on planning principles and guide the authority in its interpretation of the territory plan and operations. A copy of the statement must be presented to the Legislative Assembly within 6 sitting days of the statement being given to the authority. Also, if the copy will 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, the Minister must give a copy to the members of the Assembly before the end of the 10-day period.

To remove any doubt, subclause (3) provides that the statement of planning intent does not authorise a person to whom clause 49 (Effect of territory plan) applies to do anything inconsistent with the territory plan.

Clause 16 The authority may provide planning services to somebody other than the territory only if the Minister gives written approval.

Clause 17 The authority must give the Minister a report, or information about its operations, if it is required by the Minister, and in the form required by the Minister. The requirements under this clause are in addition to any other provision about the giving of reports or information by the authority.

Clause 18 An annual report of the authority given under the *Annual Reports (Government Agencies) Act 2004* must include a copy of any direction given to the authority under the proposed Act or another territory law during the year and a statement by the authority about action taken during the year to give effect to any direction given (whether before or during the year).
Clause 19 The authority may delegate its functions to any public servant who is an authority staff member. The authority may also delegate its function under part 9.11 (Licences for unleased land) in relation to an area of land, to the custodian of the land. The authority may also delegate to the land agency the function of granting leases on behalf of the Executive.

Part 3.4 The chief planning executive

Clause 20 The Executive must appoint a person to the position of Chief Planning Executive. A person cannot be appointed unless the Executive is satisfied that the person has the management and planning experience or expertise to exercise the functions of the chief planning executive. The appointment must not be for a term exceeding 5 years. However, a person may be reappointed. An appointment under this clause is a notifiable instrument.
Clause 21 The employment conditions for the chief planning executive are to be agreed between the chief planning executive and the Executive but are subject to any determination under the *Remuneration Tribunal Act 1995*.
Clause 22 The chief planning executive may exercise the functions given under the proposed Act or another territory law.
Clause 23 The Executive may suspend the chief planning executive from duty because of misbehaviour, or for physical or mental incapacity, provided that incapacity affects the person's performance of authority functions. The Executive may also suspend the chief planing executive's appointment if that person is convicted or found guilty in Australia, or elsewhere, of an offence punishable by imprisonment of at least 1 year.
Subclause (5) provides that the chief planning executive is entitled to be paid salary and expenses while suspended.
Subclause (4) provides that a suspension ends if:

(a) the Minister does not comply with the requirement under subclause (2) to present a statement to the Assembly; or
(b) the Assembly does not pass a resolution mentioned in subclause (3).

Subclause (2) requires the Minister to present to the Legislative Assembly a statement of reasons for the suspension not later than the first sitting day after the day the chief planning executive is suspended. Under subclause (3) the Executive must end the chief planning executive's appointment if required to do so by resolution of the Legislative Assembly made not later than 6 sittings days after the day the statement is presented.

Part 3.5 Authority staff and consultants

Clause 24 The staff of the authority are to be employed under the *Public Sector Management Act 1994* (the Public Sector Management Act). Therefore, in relation to staff members, the chief planning executive has all the powers of a chief executive under that Act, and has responsibility for the management of the affairs of the authority.

Clause 25 The authority may engage consultants, but must not enter into a contract of employment under this clause.

Part 3.6 Public register and associated documents

The format and content of the public register have been altered to make it more accessible and efficient. The register may be made available in any suitable form, including hard copy or electronic. The register will be a list of all development applications, development approvals, and compliance orders. However, it will not contain all information relevant to a matter, such as building plans, public representations, environmental impact statements and so on. These associated documents (which are defined in clause 29) support the information on the register.

Documents on the register and associated documents are available for public inspection subject to the provisions of clause 404 (Restrictions on public availability – comments, applications, representations, and proposals) and clause 405 (Restrictions on public availability – security) of chapter 14 of the proposed Act. Clause 404 clarifies the grounds on which applications for confidentiality may be made. Applicants must demonstrate the need to preserve trade secrets; or that personal injury or property damage may result if the information was made available. If parts of a document are excluded from public inspection, a statement to that effect must be included on the copies of the document. Pursuant to clause 405, parts of documents must not be made available to the public if a justice minister certifies that publication of that part might jeopardise national security, or expose a security organisation staff member or the public to risk of injury, or expose property to risk of damage.

Clause 26 The authority must keep a register (the ***public register***). The authority may keep the public register in any form the authority considers appropriate.
Clause 27 lists what the public register must contain for:

(a) each development application (unless withdrawn);
(b) if a development application has been decided under clause 158 (Deciding development applications) ;
(c) controlled activity orders, including requirements, location and name of the person who is the subject of the order;
(d) directions to carry out rectification work;
(e) prohibition notices.

Information includes the name of the applicant, a summary of the proposed development, approval or order, and key details of the application and process.

The register may contain any other information (other than associated documents for development applications, development approvals or leases; or the name of the applicant for a controlled activity order) that the authority considers appropriate.
Associated document is defined under clause 29.

If the authority approves an exclusion application under clause 404 (Restrictions on public availability - comments, applications, representations, and proposals) 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. The note explains that a note

about the exclusion must be included on the register. If a document required to be included on the register contains information that must not be made available to the public under clause 405 (Restrictions on public availability- security), the information must not be included in the register.

Clause 28 The authority must ensure that the public register and associated documents are available for public inspection during business hours and must allow people inspecting the documents to make copies of the documents or take extracts of the documents.

Clause 29 lists what is an ***associated document*** for this part for:

(1) a development application (other than an application that has been withdrawn); and

(2) a development approval.

Subclause (3) excludes some things as an ***associated document*****.**

Chapter 4 The land development agency

Part 4.1 Establishment and functions of land agency

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

Clause 30 The Land Development Agency (the ***land agency***) is established.

Clause 31 The land agency's functions are to:

a) develop land;

b) carry out works for the development and enhancement of land;

c) carry out strategic or complex urban development projects.

The land agency may also exercise any other function given to it by the proposed Act or another territory law. Subclause (3) provides that 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.

Subclause (4) requires the land agency to exercise its functions:

a) in accordance with the object of the territory plan (see clause 47); and

b) in accordance with the latest statement of intent for the land agency.

The notes explain that the land agency is required to prepare a statement of intent and that under the Legislation Act, a provision of law that gives an entity a function also gives the entity the powers necessary and convenient to exercise the function.

Clause 32 The land agency must comply with directions given to it under the proposed Act or another territory law.

Part 4.2 Financial and general land agency provisions

The note explains that the land agency must not give a guarantee without the Treasurer's written approval.

Clause 33 The proceeds of the sale of a lease of land is the income of the land agency.

Clause 34 The Treasurer may direct the land agency to pay to the Territory the amount stated in, or calculated according to, the direction. The direction may also state how and when such a payment is to be made, and the conditions relating to the payment. Subclause (3) requires the Treasurer, in giving a direction, to have regard to the land agency's assets and liabilities; income and expenditure; its ability to exercise its functions, and the requirement that the Territory obtain a reasonable return from the development and disposal of land.
Subclause (4) requires the Treasurer to present to the Legislative Assembly a copy of the direction not later than 6 sitting days after the day it is given to the land agency. Also, if the copy will not be presented to the Legislative Assembly before the end of the period of 10 working days after the direction is given to the land agency, the Treasurer must give a copy to the members of the Assembly before the end of the 10 working day period. If these requirements are not met, 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 the members.
Clause 35 The land agency is not exempted from liability for a tax under any other territory law. (The FMA applies to the land agency).
Clause 36 The Minister may give written directions to the land agency about principles that are to govern the exercise of its functions. Subclause (2) requires the Minister, before giving a direction, to tell the land agency about the proposed direction, and allow the agency a reasonable opportunity to comment on the proposed direction. The Minister must consider any comments made by the agency about the proposed direction. A direction is a notifiable instrument, and must be notified within 10 working days after it is made. If this requirement is not met, the direction is taken to have been revoked at the end of the 10 working days.
Clause 37 The Territory must pay to the land agency its reasonable net costs of complying with a direction under clause 36. The amount payable is the amount agreed between the land agency and the Treasurer or, if no agreement is reached, the amount decided by the Chief Minister.
Clause 38 The land agency board must establish an audit committee, and may establish any other committee. Land agency board members, and other people, may be appointed to a committee, but the chief executive officer must not be appointed a member of the audit committee. The chairperson of the audit committee must be a land agency board member. The procedures of a committee are as decided by the land agency board, and if the board does not decide, the procedures are decided by the committee.
Clause 39 An annual report of the land agency must include a copy of any direction given under clause 36 during the year and a statement by the agency about action taken by it during the year to give effect to any direction given (whether before or during the year).
Clause 40 The land agency may delegate its functions, including functions that have been delegated to it by the authority, to the chief executive officer or a land agency staff member. The note refers to that part of the Legislation Act that deals with delegations (part 19.4).

Part 4.3 Land agency board

Clause 41 The land agency has a governing board (the ***land agency board***).
Clause 42 The land agency board has at least 5, but not more than 8, members. The notes explain that a chair and deputy chair of the governing board must be appointed

and that the chief executive officer of the corporation is a member of the governing board. The Minister must try to ensure that the members represent the following disciplines and areas of expertise – land development, landscape architecture, sustainable development, economics, public law, finance or accounting, public administration, engineering. The chief planning executive and authority staff members must not be appointed as members of the board. Board members, other than the chief executive officer, may not be appointed for a term longer than 4 years. The note explains that a person may be reappointed if eligible to be appointed to the position.

Part 4.4 Land agency staff and consultants

Clause 43 The land agency's staff must be employed under the Public Sector Management Act.
Clause 44 The land agency may engage consultants but must not enter into a contract of employment under this clause.

Chapter 5 Territory plan

Chapter 5 establishes the territory plan (the plan) as the principle instrument for regulating land use and development. The framework for the plan is set out including:

* a statement of strategic directions
* land use zones
* codes
* development tables
* the territory plan map.

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

The Territory, the Executive, a Minister or territory authority must not do any thing which is inconsistent with the plan.

This chapter describes when a formal variation to the plan is required and how this is done. Public consultation processes are to be followed in relation to the draft plan variation. There are two periods of interim effect of the draft plan variation – (1) from the initial consultation to submission to the Minister and (2) from submission to the Minister to final approval. Once publicly notified, the authority may give the draft plan variation interim effect during the defined period (refer to clauses 63 and 64). Following public consultation, the draft plan variation is submitted to the Executive for approval. Once given to the Executive, the Territory, the Executive, a Minister or territory authority must not do any thing that is inconsistent with the draft plan variation during the defined period (refer to clauses 70 and 71). The draft plan variation documents may be referred by the Minister to a Legislative Assembly committee for a report. The Minister may direct the authority to prepare a planning report or strategic environmental assessment in relation to the draft plan variation. The authority can also prepare either report on its own initiative. If the Minister approves the plan variation, it is presented to the Legislative Assembly. The

Assembly may reject the plan variation. If it does not, the Minister must fix a date for the commencement of the variation. Public notification of the commencement of the variation is required.

Certain technical amendments to the plan do not require public consultation. The plan may be varied to include a structure plan for the development of future urban areas.

The major changes to the process for assessing development applications – the track system and environmental impact assessment – flow through to the territory plan.

There is a new requirement that the authority must consider at least once every 5 years whether the territory plan should be reviewed.

Part 5.1 The territory plan, its object and effect

Clause 45 There must be a territory plan for the ACT.
Clause 46 The plan is a notifiable instrument. On application in writing to the authority, a person may obtain a certified copy or certified extract from the territory plan. The note explains the effect of the provisions of s11 and s12 of the *Evidence Act 1971*.
Clause 47 identifies the object of the plan which is to ensure, in a manner not inconsistent with the national capital plan, the planning and development of the ACT provide the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.
Clause 48 specifies that the plan must give effect to its object in a way that gives effect to sustainability principles. The plan must set out the planning principles and policies, including policies that contribute to achieving a healthy environment in the ACT, for giving effect to its object.
Clause 49 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. The notes explain that the same entities are also prevented from doing any thing inconsistent with some draft variations of the plan and that the Territory or a territory authority is prevented from doing anything inconsistent with the national capital plan.

Part 5.2 Contents of territory plan

Clause 50 The plan must include:
(a) a statement of strategic directions;
(b) objectives for each zone;
(c) development tables;
(d) codes;
(e) a territory plan map.
The plan may also identify future urban areas and include structure plans applicable to those areas; identify areas of public land reserved in the plan for a purpose mentioned in clause 309 (Reserved areas – public land); provide for other matters relevant to the exercise of the powers of the Territory, the Executive or a territory authority to give effect to the object of the plan; and include anything else relevant to the object of the plan.

Clause 51 provides information about the content, function and purpose of the statement of strategic directions. The statement may contain planning principles covering areas of national, regional and Territory interest including principles for sustainable development. Its function is to guide long term planning for the ACT; the making of variations to the territory plan; and environmental impact statements, planning reports and strategic environmental assessments. The statement should promote the planning strategy.
Clause 52 The objectives for a zone set out the policy outcomes intended to be achieved by applying the applicable development table and codes to the zone. Under subclause (2) each objective for a zone must be consistent with the statement of strategic directions.
Clause 53 A development table for a zone must set out which assessment track applies to development proposals; which development proposals are exempt from development approval; what development is prohibited and the code that development proposals must comply with. A development table may exempt a development proposal from requiring development approval subject to a condition.
Clause 54 explains what codes must contain and the types of codes. A code must be consistent with each objective for the zone to which the code relates. It must contain either the detailed rules that apply to development proposals the code applies to; or the criteria that apply to development approvals the code applies to, other than proposals in the code track; or both. Subclauses (3) to (5) explain what is a precinct, development and general code.
Clause 55 The territory plan map must set out, in map-form, zones and precincts in the ACT.

Part 5.3 Variations of territory plan other than technical amendments

Division 5.3.1 Overview, interpretation and application – pt 5.3

Clauses 56 to 89 set out how the territory plan is varied and the associated processes.

Clause 56 A territory plan variation (other than a technical amendment) begins when any of the following occurs:

(a) the authority prepares a draft plan variation;
(b) the Minister directs the authority to revise the plan or a provision of the plan.

In the case of (a) the authority must prepare a consultation notice and once publicly notified, may give the variation interim effect. The authority may revise or withdraw a draft plan variation after the end of public consultation. Unless the variation is withdrawn, the authority must give the variation to the Minister for approval and give notice that the variation and other documents are available for public inspection. Once this notice is given, the draft plan variation has a second period of interim effect. After receiving a committee report on the variation, the Minister may approve the variation or take other action under clause 75 (Minister's powers in relation to draft plan variations). The Minister may revoke the approval before it is presented to the Legislative Assembly but otherwise must present the variation to the Assembly. If the Assembly does not reject the variation (which it has power to do) the Minister must fix a day for the commencement of the variation. Different provisions apply to technical amendments to the territory plan.

Clause 57 defines ***background papers, consultation comments, consultation notice*** and ***period; corresponding plan variation, draft plan variation***, ***plan variation***, ***public availability notice*** and ***technical amendments*** for part 5.3.
Clause 58 Part 5.3 does not apply to technical amendments of the territory plan.

Division 5.3.2 Consultation on draft plan variations

Clause 59 The authority may prepare a draft plan variation to vary the territory plan.
Clause 60 If preparing a draft plan variation, the authority must:

(a) tell the Minister in writing it is doing so;
(b) consult with the national capital authority, the conservator of flora and fauna, the environment protection authority, the heritage council, and the custodian of unleased land or leased public land that may be affected by the variation, if any;
(c) consider any relevant planning report or strategic environmental assessment; and
(d) consider whether the variation would promote the planning strategy if the variation, if made, would vary the statement of strategic directions.

Clause 61 If the authority advises the Minister that it is preparing a draft plan variation, the Minister may direct the authority to do 1 or both of the following:

(a) to prepare a planning report or strategic environmental assessment in relation to the variation;
(b) to tell the Minister when the variation is ready to be notified under clause 62 (Public consultation- notification). The notes explain that the authority must comply with a direction given by the Minister and to see part 5.6 re planning reports and strategic environmental assessments.

The validity of a corresponding plan variation for a draft plan variation is not affected by the failure to tell the Minister when the variation is ready to be notified under clause 62.
Clause 62 This clause sets out the public consultation procedures to be followed by the authority in relation to a draft plan variation. The authority must, before giving the draft plan variation to the Minister for approval, prepare a consultation notice:

(a) stating copies of the draft plan variation and the background papers are available for public inspection and purchase;
(b) inviting people to give written comments (***consultation comments***) to the authority;
(c) stating that copies of written comments will be available (unless exempted) for public inspection;
(d) that complies with clause 63 (Public consultation – notice of interim effect etc).

The authority may extend the consultation period and must publish the consultation notice and any extension in a daily newspaper. The consultation notice and any extension notice are notifiable instruments. This clause does not apply to a draft plan variation that has been revised by the authority in accordance with a requirement under clause 75 (3)(b) (Minister's powers in relation to draft plan variations).
Clause 63 sets out how notice of interim effect is given. A consultation notice must state whether or not clause 64 applies to the draft variation, or part thereof, and where further information about the draft plan variation can be found. A consultation notice that states that clause 64 applies must also state the effect of clause 64 and may also state, for clause 64 (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.

Clause 64 If a consultation notice states that this clause applies to a draft plan variation, the Territory, the Executive, a Minister or a territory authority must not, during the defined period or the 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 was varied in accordance with the draft variation. The note explains that the same entities must also not do anything inconsistent with the territory plan. Subclause (3) sets out the meaning of ***defined period***. The "defined period" begins on the day the consultation notice for the draft plan variation is notified and ends either on the day the public availability notice under clause 69 (Public notice of documents given to the Minister) is notified; the variation is withdrawn; or one year after the notification day, whichever is the earliest. ***Draft plan variation*** includes a provision of a draft plan variation.
Clause 65 The authority must make copies of the draft plan variation and the background papers available for public inspection and purchase during the consultation period, unless, in the authority's opinion, it is not in the public interest for any part to be published, in which case that part must be excluded from public inspection. A statement that parts have been excluded in the public interest must be included on the particular document.
Clause 66 Copies of consultation comments on a draft plan variation must also be made available for public inspection.

Division 5.3.3 Action after consultation about draft plan variations

Clause 67 On the expiration of the period for public comment, the authority may revise the draft plan variation or withdraw it. The withdrawal notice must include a statement of the effect of clause 64 (Effect of draft plan variations publicly notified) in relation to the withdrawal and is a notifiable instrument. The withdrawal must be published in a daily newspaper within the specified time. In revising a variation or withdrawing a variation, the authority must consider written comments about the draft variation received from any entity, including the national capital authority. In addition, the authority has the power at any time before a draft plan variation is given to the Minister to revise a variation to correct a formal error.

Division 5.3.4 Draft plan variations given to Minister

Clause 68 After the expiration of the period for public comment and if the authority has not withdrawn the variation, the draft plan variation, as varied under clause 67, if applicable, will be submitted to the Minister with the documents specified in subclause (2).
Clause 69 The documents referred to in clause 68 (2) must be available for public inspection and notice of such must be given. The notice is a notifiable instrument. The notice must also be published in a daily newspaper.
Clause 70 sets out what a public availability notice must state.
Clause 71 If a public availability notice states that this clause applies, the Territory, the Executive, a Minister or a territory authority must not, during the defined period, do or approve the doing of anything which would be inconsistent with the territory plan if it was varied in accordance with the draft plan variation. Subclause (3) sets out the meaning of ***defined period***. The "defined period" begins on the day when the draft plan variation given to the Minister is notified and ends the day fixed by the Minister (see clause 82 and clause 83) for the variation, or part of it, to commence;

the Assembly rejects the variation; the variation is withdrawn or one year after the notification day, whichever is the earliest. ***Draft plan variation*** includes a provision of a draft plan variation.

Division 5.3.5 Consideration of draft plan variations by Assembly committee

Clause 72 The Minister may refer the draft plan variation documents, as defined, to an appropriate committee of the Legislative Assembly, together with a request for a report by that committee, within 20 working days of receipt of the draft plan variation. If the Minister does not refer the draft plan variation, the committee of the Legislative Assembly is not prevented from considering the draft plan variation documents if the draft plan variation is otherwise referred to the committee.
Clause 73 If a Minister refers a draft plan variation to a committee under clause 72 no action can be taken on the variation until the committee has reported unless the committee fails to report promptly (i.e. within 6 months – see clause 74). After the committee reports, the Minister must take action under clause 75 (Minister's powers in relation to draft plan variations).
Clause 74 states that the Minister may take action on a variation without a Legislative Assembly committee report if the report is not provided within 6 months.

Division 5.3.6 Ministerial and Legislative Assembly action on draft plan variations

Clause 75 sets out the Minister's powers in relation to draft plan variations when the Minister is given a draft plan variation by the authority or the Minister revokes the approval of a plan variation. Under subclause (3) he must:

(a) approve the variation; or

(b) return the variation to the authority and direct the authority to do 1 or more of the following: conduct further consultation; consider any relevant planning report or strategic environmental assessment; consider any revision suggested by the Minister; revise the variation in a stated way; or withdraw it.

Before doing any of the above, the Minister must consider any recommendation of an Assembly committee and, if the variation would vary the statement of strategic directions, the Minister must consider whether the variation would promote the planning strategy. The note explains that the Minister must not take action under this clause in some circumstances if a committee of the Legislative Assembly has not reported. A further note explains that the territory plan has no effect to the extent that it is inconsistent with the national capital plan, but is taken to be consistent with the national capital plan to the extent that it can operate concurrently with it (see the PALM Act, s 26). A direction under subclause (3) (b) and the withdrawal of a variation are notifiable instruments. The withdrawal must also be published in a daily newspaper. This clause does not apply if a draft plan variation has been referred to an appropriate committee of the Legislative Assembly and either the committee has not reported or the report has been provided but not yet considered by the Minister.
Clause 76 The Minister may revoke approval of a draft plan variation before presentation to the Legislative Assembly and return it to the authority. Clause 75 applies if it is returned.
Clause 77 If the Minister returns the variation with a direction under subclause 75 (3)(b) the authority must comply with each direction. The authority may revise the draft variation and give it to the Minister for approval with a written report about its

compliance with the Minister's direction and a written report about any further revision of a formal error in the draft variation. If the Minister's direction is to revise the draft plan in a stated way, the authority must give the Minister the draft variation revised in accordance with the stated direction, together with a written report about any further revision of a formal error in the draft variation.

Clause 78 The Minister must present to the Legislative Assembly an approved plan variation together with the listed documents within 5 sitting days of approval. This clause is subject to clause 76 which allows the Minister to revoke approval before presentation. The variation does not come into effect if it is not presented as required.

Clause 79 The Legislative Assembly may, by resolution, reject the plan variation partly or completely. Notice of a motion to reject must be given within 5 sitting days of presentation of the draft plan variation to the Assembly. If, within 5 sitting days of presentation of a rejection notice, the motion is not called on or is called on and moved but not withdrawn or otherwise disposed of, the plan variation is deemed to have been rejected.

Clause 80 If the Assembly dissolves or expires before the end of the 5 sitting day period after a motion has been given then the plan variation is deemed to have been presented at the next first sitting day of the Assembly after the next general election.

Clause 81 If a variation is completely rejected by the Assembly, it does not come into force and the authority must prepare a notice about the rejection. The notice is a notifiable instrument. The authority must also publish the notice in a daily newspaper as soon as practicable after the rejection is notified.

Division 5.3.7 Commencement and publication of plan variations

Clause 82 If a plan variation or part of a plan variation is not rejected, the Minister must fix a date for commencement of a variation. Note 1 explains that a commencement notice must be notified under the Legislation Act. Note 2 explains that on commencement, a plan variation varies the territory plan according to its terms. The authority must publish in a daily newspaper the commencement notice and make copies of the variation available for public inspection or purchase.

Clause 83 If part of a plan variation is rejected or withdrawn, that part does not come into force. In relation to each provision that is not rejected, the Minister must fix a date for commencement of the provision or withdraw it. A withdrawal is a notifiable instrument.

Clause 84 The authority must publish a commencement notice for an approved provision or a withdrawal notice in a daily newspaper and make copies of an approved provision available for inspection or purchase.

Part 5.4 Plan variations – technical amendments

Clause 85 defines ***code variation***, ***error variation***, ***limited consultation*** and ***technical amendment***.

Clause 86 defines what plan variations are technical amendments to the plan.

Clause 87 Limited consultation is required for the technical amendments set out in subclause (1). All other technical amendments do not need consultation.

Clause 88 A technical amendment must be notified under the Legislation Act. The authority must, by ***commencement notice***, fix a day for the technical amendment to commence. The commencement notice is also notifiable under the Legislation Act.

Within 5 working days of such notification the authority must publish a notice in a daily newspaper about the variation in accordance with subclause (5).
Clause 89 defines what limited consultation means.

Part 5.5 Plan variations – structure plans and rezoning in future urban areas

This part sets out the process for territory plan variations relating to urban land release for future urban areas and formalises the status of structure plans, concept plans and estate development plans.

Clauses 90-91 The territory plan may be varied under part 5.3 to include a structure plan which sets outs principles and policies for development of the future urban areas. The notes explain that future urban areas may be identified in the territory plan and certain development may be prohibited in future urban areas.
Clause 92 defines a concept plan. A concept plan applies the principles and policies in the structure plan to future urban areas and is a precinct code in the territory plan (see clause 54 (3)) that guides the preparation and assessment of development in future urban areas and assessment of development once the areas cease to be future urban areas.
Clause 93 defines an estate development plan. 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 and any other code that applies to the estate. Subclause (2) sets out what an estate development plan must contain and subclause (3) sets out what an estate development plan may include.
Clause 94 The authority may vary the territory plan as a technical amendment (clause 88 – Making technical amendments) to rezone land in a future urban area unless the rezoning is not consistent with the principles and polices in the structure plan for the area. The territory plan may be varied under clause 88 to change a boundary of a future urban area if the change is consistent with the structure plan for the area and the change is necessary to prevent the boundary intruding on leased land other than as intended.
Clause 95 This clause applies to land dealt with by an estate development plan if the plan is approved under a development application. The authority must vary the territory plan as a technical amendment (clause 88) to identify the zones that will apply to the land, consistent with the estate development plan; and to incorporate any other element of the estate plan that should be ongoing. Doing so has the effect of the land ceasing to be in a future urban area.

Part 5.6 Planning reports and strategic environmental assessments

Clauses 96 to 100 formalise the requirements for planning reports and strategic environmental assessments to be prepared for territory plan variations.

A planning report is designed to inform the authority's decision on matters such as whether to grant a Crown lease or whether to recommend a variation to the territory plan. It is intended that a planning report would be used when significant planning issues are evident, but not in the case of a plan variation with major strategic planning implications - in this case, a strategic environmental assessment would most likely be required.

Planning reports are intended to have three primary functions:

(1) To identify and assess the impacts of granting a proposed Crown lease and inform the decision about whether it is to be offered;

(2) To assist in the crafting of the terms of a draft Crown lease to be made available to prospective purchasers; and

(3) To inform the authority's consideration of whether a variation to the territory plan is appropriate.

It is intended that the Minister for Planning, or the Minister's delegate within the authority, may exercise discretion to direct a proponent/developer (ordinarily the LDA) to prepare a planning report before a lease is offered or where a plan variation may be requested, but only where there are significant unresolved planning and/or environmental issues. For example, an intention to offer a lease over a parcel of undeveloped commercial land in the city centre may raise issues of appropriate use (commercial, residential or a mixture of both), building form (height, siting, GFA), provision of infrastructure, tree retention and traffic management, among others, that would best be examined by a planning report. By contrast, a small, undeveloped parcel attached to a local centre may raise no such issues and a planning report in this case would not be required.

The planning and land authority currently has a practice of requiring proponents to justify a proposed plan variation by a planning report. Some lease grants are only made after preliminary assessments. The planning report provided for in the proposed Act substitutes for these current assessment tools.

Strategic environmental assessments (SEA), while potentially broad in scope, are intended to cover assessment of a relatively specific, discrete policy initiative and as such would not take the place of documents like the Canberra Spatial Plan which is intended to cover strategic planning matters at a Territory wide level. The Canberra Spatial Plan is closer in form to the intended planning strategy than an SEA.

The genesis of an SEA is anticipated to be typically a major Government initiative (such as a major urban land release program) that has potential implications that:

* cut across a number of planning policy issues including social, built environment, heritage, cultural issues as well as biological, and ecological issues; and
* require analysis of synergistic and cumulative impact issues.

In this case, the SEA may set an overall assessment framework of which there are several parts, such as an Action Plan under the *Nature Conservation Act 1980* (the Nature Conservation Act). The SEA framework would be able to be used to inform an instrument such as the Action Plan.

Where the chief issue at hand is the potential impact on a particular ecological community, an Action Plan may be the more appropriate vehicle for assessment/consultation.

Clause 96 defines a planning report as a report prepared to inform a decision to be made under the proposed Act, for example, whether to grant a lease or prepare a variation (other than a major variation) to the territory plan. A regulation may prescribe what must be included in a planning report. A major variation is one that, because of its scope or significance, would be more appropriately assessed by a strategic environmental assessment.
Clause 97 requires the authority to prepare a planning report if directed to do so by the Minister. The note explains that the Minister may make the direction under Clause 61 (Ministerial requirements for draft plan variations being prepared) and 238(2) (Planning report before granting leases). The authority may prepare a planning report if satisfied it is necessary or convenient.
Clause 98 defines a strategic environmental assessment. It is a comprehensive environmental assessment suited to proposals in relation to major policy matters rather than individual development proposals.
Clause 99 requires the authority to prepare an SEA if directed to do so by the Minister or if the Act otherwise requires the authority to prepare an assessment. The authority may prepare an assessment if satisfied it is necessary or convenient to do so in relation to a matter relevant to the object of the proposed Act.
Clause 100 sets out that development of an SEA, the minimum content of an SEA and weighting of recommendations in an SEA may be prescribed by regulation.

Part 5.7 Review of territory plan

Clause 101 The authority must consider whether the territory plan should be reviewed at least once every 5 years. Subclause (2) sets out what the authority must consider in deciding whether the plan should be reviewed. Notice of the authority's consideration and its decision is necessary. The notice is a notifiable instrument. The authority need not undertake a review unless it decides it is necessary or is directed to do so by the Minister and a decision not to review does not affect the authority's function of continually reviewing the territory plan.
Clause 102 If the authority decides a review of the territory plan is necessary, the authority must do so and prepare a strategic environmental assessment in relation to the review. Notice of the authority's findings on the review must be given to the Minister. The notice is a notifiable instrument.

Part 5.8 Territory plan – miscellaneous

Clause 103 The validity of a provision of the territory plan can only be questioned in a legal proceeding if the proceeding is started within 3 months of the commencement of the territory plan variations. Validity cannot be questioned on the basis of inconsistency with the planning strategy.

Chapter 6 Planning Strategy

This chapter mandates that a long term planning strategy be prepared, reviewed every 5 years and updated as the responsibility of the Executive. The main object of the planning strategy is to provide 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 in accordance with sound financial principles. The planning strategy allows for longer term and more

comprehensive strategic planning directions than are currently available in the Minister's statement of planning intent (see clause 15 in chapter 3 for further information on the statement of planning intent).

The planning strategy may be used to develop the statement of strategic directions in the territory plan but is not part of, and does not affect, the plan. The planning strategy is to be considered by the authority in preparing variations to the territory plan. It is not a relevant consideration for decisions under chapters 7 to 11 inclusive and cannot be considered by a court in a proceeding on a decision made by the Minister, the authority or any other entity.

Clauses 104-105 The Executive must prepare a long term planning strategy, which is a notifiable instrument.
Clause 106 sets out the main object of the planning strategy.
Clause 107 The planning strategy may be used to develop the statement of strategic directions in the territory plan but is not part of, and does not affect, the territory plan.
Clause 108 The planning strategy must be considered by the authority under clauses 60 (Consultation etc about draft plan variations being prepared) and 101(2)(e) (Consideration of whether review of territory plan necessary); by the Minister under clause 75 (Minister's powers in relation to draft plan variations); and by the Executive under clause 109 (Consideration of whether review of planning strategy necessary). Otherwise, it cannot be considered and, in particular, is not a relevant consideration for a decision under chapters 7 to 11 inclusive. It also cannot be considered by a court in a proceeding on a decision made by the Minister, the authority or any other entity. In this clause ***court*** includes a tribunal, authority or person with power to require the production of documents or the answering of questions.
Clause 109 The Executive must consider whether the planning strategy should be reviewed at least once every 5 years. In deciding whether to review the strategy, the Executive must consider if the strategy is consistent with its main object. A notice must be prepared stating that the Executive has considered whether the planning strategy should be reviewed and its decision. The notice is a notifiable instrument. The Executive is not required to undertake a review.
Clause 110 If the Executive decides the planning strategy should be reviewed, the Executive must arrange for it to be reviewed.

Chapter 7 Development Approvals

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

Key elements of the development application process will include:

- the assessment track system of code, merit and impact assessment and prohibited and exempt development
- details of the information that must be lodged with the development application to support the approval, such as an environmental impact statement (EIS) for impact assessable development
- a clearly defined process to request further information
- clearly defined criteria for assessing applications to amend a development approval

- if a use is allowed under a lease but beginning the use is a prohibited development, a person may apply to the authority for development approval for the proposal assessed in the impact track
- a refinement to agency referral processes
- decision-making timeframes are matched to the assessment track .

The overarching framework for development approval remains, including application, notification, entity referral, decision and appeal rights.

A system of assessment tracks to guide people through the development assessment process is the key feature of this chapter. It is the most significant feature of the proposed Act. The new assessment track system determines the processes for each development application. It aims to tailor the application and approval process to the complexity and impact of the development.

The development assessment process in the ACT is comprehensively changed with the assessment track system. The track system will establish what level of assessment is needed (if any), document requirements, notification requirements, appeal rights and statutory timeframes for decision making.

Proponents can find out which track a proposal will be assessed under by reading the development table for the relevant zone in the territory plan.

The authority may ask an applicant for further information that is essential to assess an application at any time. If the request for further information is made within 10 working days of lodgment, then the following time extension applies. In this case, the time that the authority has to decide the application is extended, by the time it takes for the applicant to provide sufficient information to the authority. This will encourage a prompt response by an applicant to a request notice.

Certain small-scale or less complex proposals will be classified ‘Exempt’ and need no development application and, in some cases, no building approval. This exempt category offers significant savings in time and effort for thousands of ACT residents each year, who currently require development approval or building approval (or both) for a range of construction proposals.

Various types of development are already prohibited, and this will continue.

Where there are potential significant public health impacts, the Minister for Health will retain the Minister’s current power to initiate an EIS under the proposed Act. Where there are potential significant environmental impacts associated with activities requiring an environmental authorisation, and those activities are not the subject of a development application under the proposed Act, the Minister for Environment retains the Minister’s current power to initiate an EIS under the Environment Protection legislation.

Development Approvals – Summary table

Assessable Development			Exempt development	Prohibited development
Code Track Development Proposal	**Merit track Development Proposal**	**Impact track Development proposal**		
Can be assessed using code requirements in the relevant code(s), without considering merit criteria or anything else in the territory plan. The code track applies if the relevant development table says it applies.	Can be assessed using code requirements and merit criteria in the relevant code(s), the objectives for the relevant zone and the requirements/factors set out in clauses 118/119. The merit track applies if the relevant development table says it applies.	Can be assessed using the statement of strategic directions, the EIS, the relevant code(s) and other matters set out in clauses 127/128. The impact track applies if relevant development table says it applies; it is a schedule 4 proposal; or Minister makes declaration under clauses 123/124; or if use is permitted under the lease, but beginning a use is prohibited by the territory plan.	Development application is not required and no development application can be made.	No development application can be made
Decision to be made within 20 working days	Decision to be made within 30 to 45 working days	Decision to be made within 30 to 45 working days		
No right of referral under Division 7.3.3	Referral under Division 7.3.3 possible	Referral under Division 7.3.3 possible		
Public notification not required	Public notification required	Public notification required		
Decision cannot be reconsidered under Division 7.3.10	Decision can be reconsidered under Division 7.3.10	Decision can be reconsidered under Division 7.3.10		
Only applicant can appeal if approval is given subject to conditions, no third party appeal rights	Third party appeals only available if “major public notification” (see clause 151) is required and the relevant eligibility criteria are met. In addition, a regulation may exempt specified development from third party appeal.	Third party appeals are available subject to meeting eligibility criteria unless an exemption regulation applies (the regulation may exempt specified development from third party appeal).		
EIS not required	EIS not required	EIS required		

Part 7.1 Outline

Clause 111 This chapter describes the assessment tracks that are to be followed, as well as exempt and prohibited development. The assessment tracks are:

(a) code track;
(b) merit track; and
(c) impact track.

This chapter also sets out when a development may be undertaken without approval (exempt development) and when a development must not be undertaken (prohibited development).

Part 7.2 Assessment tracks for development applications

Division 7.2.1 Operation of assessment tracks generally

Clause 112 A person who has a development proposal may apply to the authority for approval to undertake the development proposed. If an assessment track applies to a development proposal that track must be followed in assessing the development application for the proposal (irrespective of whether the decision maker is the Planning and Land Authority or the Minister).

Clause 113 Which assessment track applies is worked out with reference to the criteria in the development table. That track applies unless a Minister makes a declaration under clause 123 (Minister may declare impact track applicable); or clause 124 (Declaration by Public Health Act Minister affects assessment track) applies the impact track.

Clause 114 This clause sets out which code requirements apply if 2 or more codes apply to a proposal and the relevant code requirements are inconsistent.

Division 7.2.2 Code track

Code assessable developments will be assessed against specific "code requirements" (for example, setbacks from the boundaries) that are set out in the relevant code. For code assessable development there will be no flexibility in how the code requirements are applied - if a development proposal satisfies the relevant code requirements it must be approved. Also, there will be no public notification of development applications in code assessment. This is because the code requirements for such a straightforward type of development have already been through full public consultation and assessment. Because the code rules are black and white with no grey area for case-by-case assessment and judgment, there is no significant exercise of discretion that could properly give rise to a right of review before the AAT. Referral to an entity under division 7.3.3 (Referral of development applications) is not possible. A decision to refuse an application in the code track may not be reconsidered under division 7.3.10 (Reconsideration of decisions on development applications).

Clause 115 Development approval must be given for a development proposal on application if the proposal is in the code track and the proposal complies with the relevant code requirements.

Clause 116 For a proposal in the code track, there is no requirement to publicly notify the proposal; there is only a right of review under chapter 13 by the applicant if the proposal is approved subject to a condition; there is no referral under division 7.3.3 (Referral of development applications) and a decision to refuse an application may not be reconsidered under division 7.3.10 (Reconsideration of decisions on development applications).
Clause 117 A development application in the code track must be decided not later than 20 working days after the day the application is made to the authority.

Division 7.2.3 Merit Track

The relevant development table of the territory plan identifies the types of development that requires merit assessment. Merit assessable development proposals may be approved notwithstanding that they do not meet the prescriptive code requirements provided that they do meet the relevant merit criteria of the relevant code(s), any other requirements of the territory plan and the requirements/factors set out in clauses 118 and 119 including the relevant objectives for the relevant zone. Merit criteria provide for flexibility and a performance-based assessment that enables the applicant to demonstrate that a development is appropriate even though it may deviate from the prescriptive code requirements. Such flexibility is expected to facilitate the best design outcome for a site and for neighbours.

The proposed process for this type of application will be similar to the current process. Public notification in some form is required for all merit track development proposals. Third party appeals are possible if certain criteria are met.

Clause 118 Development approval is given for a development proposal in the merit track only if it is consistent with the relevant code. There are additional requirements for proposals relating to land comprised in a rural lease and proposed developments that will affect a registered tree or declared site. Development approval must not be given for a proposal in the merit track if approval would be inconsistent with any advice given by an entity to which the application was referred unless the person deciding the application is satisfied of certain matters. However, if the proposed development will affect a registered tree or declared site the person deciding the development application must not approve it unless the approval is consistent with the advice of the conservator of flora and fauna.
Clause 119 This clause sets out the considerations for the decision-maker in deciding a development application for a development proposal in the merit track.
Clause 120 Merit track proposals must be publicly notified under division 7.3.4 (Public notification of development applications and representations) and there may be a right of review under chapter 13 (Review of decisions).
Clause 121 An application for a proposal in the merit track must be decided within 30 working days if no representation is made, or in any other case, within 45 working days after the day the application is made to the authority.

Division 7.2.4 Impact track

Development applications that are impact assessable will undergo the broadest level of assessment, including an environmental impact statement (EIS). Impact

assessment will apply to infrastructure proposals, developments in sensitive areas, developments that have been declared impact assessable by the relevant Minister, and all other proposals not covered by the exempt, prohibited, code or merit tracks.

Under the proposed changes, preliminary assessments and public environment reports will be abandoned in favour of the EIS as the sole method of environmental impact assessment. Developments listed in schedule 4 to the proposed Act will automatically trigger the impact assessment track and an EIS. The process for an EIS is covered in chapter 8.

Impact assessment will involve consideration of the development proposal against the territory plan and the finalised EIS. The application must be publicly notified and invite representations. Anyone who makes a representation will accrue third-party appeal rights against the decision on the application.

Clause 122 sets out when the impact track applies to a development proposal.
Clause 123 states that the Minister may, in writing, declare that the impact track applies to a development proposal. Such a declaration cannot be made unless the Minister is satisfied on reasonable grounds that there is a risk of significant adverse environmental impact, on the site or elsewhere, from the proposed development. Significant adverse environmental impact is defined in subclause (4), and the matters that the Minister must consider in deciding whether the adverse environmental impact is significant are also set out.
Clause 124 The Public Health Minister may make a declaration that the impact track applies to a development proposal if the conditions set out in subclause (1) are met.
Clause 125 If the Minister makes a declaration under clause 123 or clause 124 in relation to a development proposal and the application does not satisfy the requirements for an impact track application, the application is taken to have been withdrawn. The authority must give the applicant notice of the effect of this clause.
Clause 126 states that a development application for a proposal in the impact track must include a completed EIS unless exempted by the Minister under clause 205 (EIS not required if development application exempted). For when an EIS is completed see clause 203 (When is an EIS completed?).
Clause 127 Development approval for a proposal in the impact track must not be given unless either an EIS has been completed or the Minister has exempted the application under clause 205; and the proposal is consistent with those matters set out in subclause (1)(b). Furthermore, approval must not be given if approval would be inconsistent with any advice given by any entity to which the application was referred unless the person deciding the application is satisfied of certain matters. However, if the proposed development will affect a registered tree or declared site the person deciding the development application must not approve it unless the approval is consistent with the advice of the conservator of flora and fauna.
Clause 128 sets out what the decision maker must consider in deciding a development application for a proposal in the impact track.
Clause 129 A development application for a development proposal in the impact track must be publicly notified under division 7.3.4 (Public notification of development applications and representations) and there are third party appeal rights.
Clause 130 A development application for a development proposal in the impact track must be decided within 30 working days if no representation is made, or in any

other case, within 45 working days after the day the application is made to the authority.

Division 7.2.5 Development proposals not in development table and not exempted

Clause 131 provides that the impact track applies to development proposals not otherwise provided for. If the relevant development table does not state which assessment track applies or that the proposal is exempt from approval or is prohibited, and the proposal is not otherwise exempt, the impact track applies.

Division 7.2.6 Exempt development proposals and prohibited developments

Clause 132 A development proposal may be proceeded without a development application and approval if it is exempt. A development proposal is exempt if:

(a) it is exempt under the relevant development table; or

(b) exempted by regulation.

Clause 133 If a development is prohibited either under the relevant development table or under subclause (2) a person cannot apply for approval of the development proposal. The notes explain that a development proposal is prohibited if any part of it is prohibited; it is an offence to undertake prohibited development; if development is authorised by a development approval and subsequently becomes prohibited, the development can continue; and, development that is lawful when it begins continues to be lawful. Under subclause (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.

Clause 134 If a use is allowed under a lease but beginning the use is a prohibited development, a person may apply to the authority for development approval for the proposal. Despite clause 133, the proposal is taken not to be prohibited development and the impact track applies. Clause 194(1) – (4) (Offence to undertake prohibited development) does not apply if the approval is of an application mentioned in subclause (2)(a).

Part 7.3 Development applications

Division 7.3.1 Pre-application advice on development proposals

Clause 135 The authority may, but need not, consider a development proposal if asked by the proponent of the proposal. Subclause (2) sets out what the authority must tell the proponent after considering the development proposal. The authority's advice on a proposal is intended to guide and assist and expires after 6 months. The authority may act inconsistently with its advice under this clause in the circumstances set out in subclause (4).

Division 7.3.2 Requirements for development applications

Clause 136 sets out the formal requirements for the different types of applications for development approval. These include the requirements that the application must:

- be in writing; and

- be signed by the applicant or, if the applicant is different to the lessee, the lessee; and
- address the code requirements if the application is in the code track; or
- address all relevant code requirements and relevant merit criteria and possible end effects if the application is in the merit track; or
- address all relevant code requirements and relevant merit criteria and include a completed EIS if the application is in the impact track; and
- for matters that must be referred to a relevant agency, and if regulations require, include assessment against criteria provided by the agency.

The person who signs the application is the applicant (this includes the lessee). Subclause (4) defines ***current site value***, ***market value***, ***relevant merit criteria*** and ***survey certificate***.

Clause 137 states that an entity must not ***act inconsistently*** (as defined in the clause) with a development approval except under certain circumstances as set out in subclause (2). Subclause (3) sets out an exception to subclause (2) (a).

Clause 138 The authority may request further information from an applicant for development approval. The request must state the period in which the information has to be provided and that the information must be in writing. The period must be at least 20 working days or as prescribed by regulation, whichever is the shorter. The period can be extended once only for a period not longer than 20 working days. The note explains that the authority may extend the period within which further information must be provided after the end of the period being extended. If the request for further information is made within 10 working days of lodgement, the time period for the authority's decision is extended by the time it takes to obtain the information (see clause 161 (Extension of time for further information - further information sufficient)).

Clause 139 If further information is requested under clause 138 and some or all of the information is not provided, the authority may refuse the application under clause 158 (Deciding development applications). Such a refusal, like all development application refusals, is subject to merit review by the AAT.

Clause 140 The authority may, on its own initiative or on application, correct a formal error in a development application. A correction cannot be made if it would adversely affect someone other than the applicant. The authority will be taken to have made a correction if the authority has not told an applicant, within 5 working days of the applicant seeking correction, that correction has been refused. Written notice of the correction must be given to each applicant.

Clause 141 The authority may, if asked by the applicant, amend a development application if satisfied the application will remain substantially the same and the assessment track will not change. The authority must amend or refuse to amend the application within 5 working days of being asked for an amendment. If the applicant is not informed of the authority's refusal with this time period the authority is taken to have amended the application.

Clause 142 If an application was referred to an entity before it was amended the authority must refer the application to the entity with a brief description of how the application has been amended. The authority need not do this if satisfied the amendment does not affect any part of the application in relation to which the referral entity made a comment.

Clause 143 If the authority amends a development application and the making of the application has been publicly notified, the authority must publicly notify the amended

application under division 7.3.4 (Public notification of development applications and representations). Public notification is not required if the authority is satisfied no-one other than the applicant will be adversely affected by the amendment and any increase in environmental impact will be no more than minimal.
Clause 144 An applicant may withdraw a development application at any time before the application is approved.

Division 7.3.3 Referral of development applications

Clause 145 The authority must refer a development application prescribed by regulation to an entity prescribed by regulation except if satisfied that the entity has been adequately consulted in relation to the application within the previous 6 months and the entity agrees in writing to the proposed development. The written agreement is taken to be advice received in accordance with clause 146 (Requirement to give advice in relation to development applications). If the authority is not required to refer an application under subclause (1) it need not, and the decision of the authority is not affected by the authority not referring the application to the entity.
Clause 146 If a development application is referred to an entity, the entity must provide its advice within 15 working days or a shorter period set by regulation. The Note explains that a written agreement to a proposal under subclause 145 (2)(b) is taken to be advice.
Clause 147 If an entity fails to provide advice when an application is referred to it, the entity is taken to have given advice that supports the application.
Clause 148 sets out the effect of advice given by a referral entity. The entity must not act inconsistently with its advice unless the conditions set out in subclause (2) are met (which are, generally, that further relevant information which would have affected its advice comes to its attention). Subclause (3) states that subclause (2) does not apply to further information if the information was not required in the development application and the information is required by the entity after the application is approved and the information is consistent with information already provided except that it is more detailed. Subclauses (4) and (5) define ***acts inconsistently***.

Division 7.3.4 Public notification of development applications and representations

The following are the key features of the public notification requirements:

(a) Development proposals in the code assessable track do not require public notification;
(b) All development proposals in the merit and impact tracks must be publicly notified in some manner;
(c) Development proposals in the merit track (other than those identified in the regulation) require public notification only through:
    1. written notice to the lessee of adjoining premises; and
    2. if the development proposal includes a lease variation, written notice to people with a registered interest in the relevant land that is the subject of the variation;
(d) Development proposals in the merit track that are identified in the regulation and for development proposals in the impact track – require public notification through both the methods of (c) above and also through the display of a sign on the relevant property and a notice in a daily newspaper.

(e) Third party representations can be made for all merit and impact track development proposals. But the right of a third party to seek merit review in the AAT is not available for code matters and is not available for merit matters that need only be notified as per (c) above. Matters that require public notification as per (d) above potentially give rise to third party rights of appeal (if other requirements of the Act are satisfied and the regulation does not exempt the relevant matter from third party appeal).

Clause 149 defines ***publicly notifies*** for chapter 7. The authority publicly notifies a development application if it notifies:

(a) for a merit track proposal – under clause 150 (Public notice to adjoining premises) and, if the development proposal is, or includes, a lease variation, under clause 151 (Public notice to registered interest-holders); or

(b) for an impact track proposal or merit track proposal that is prescribed by regulation for this paragraph - under clauses 150 (Public notice to adjoining premises) and 152 (Major public notification) and, if the development proposal includes a lease variation, clause 151 (Public notice to registered interest-holders).

The notes explain that only developments to which the merit track and impact track applies are required to be publicly notified. Some amended development applications must be re-notified. 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 clause 152 (see schedule 1 item 4).

Clause 150 This clause applies if the authority must notify the development application and the relevant land adjoins land that is leased. If the place is occupied, the authority must give written notice to the registered proprietor of the lease of the adjoining place. If it is unoccupied, the authority must give written notice to the lessee of the adjoining place at the lessee's last known address. The authority need not give notice if it is impractical because of the number of adjoining places or if the adjoining place is leased by the applicant or a person for whom the applicant has been appointed to act as agent. The validity of a development approval is not affected by a failure of the authority to comply with this clause. Subclause (6) defines ***adjoins*** and ***registered proprietor***.

Clause 151 The authority must give written notice of the making of a development application to each person, other than the applicant, with a registered interest in land in a lease where a development application is, or includes, a lease variation.

Clause 152 If the authority must notify a development application under this clause, the authority must display a sign on the place to which the application applies and publish notice of the application in a daily newspaper. The Note explains that this clause is subject to clause 404 (Restrictions on public availability – comments, applications, representations and proposals) and clause 405 (Restrictions on public availability- security). Subclause (2) establishes an offence if a person moves, alters, damages, defaces, covers or prevents access to the sign while it is required to be displayed. The maximum penalty is a fine of 5 penalty units. It is a strict liability offence under subclause (3). Subclause (2) does not apply if the person acts with the written approval of the chief planning executive and the validity of a development approval is not affected by a failure of the authority to comply with this section.

Clause 153 Anyone may make a representation about a development application that has been publicly notified. The representation must be made during the public consultation period (which may be extended by the authority under subclause (3)). A

person may, in writing, withdraw a representation at any time before the application is decided. A representation about a development application may relate to how the development meets, or does not meet, any finding or recommendation of the EIS for the development but may not relate to the adequacy of the EIS for the development. Subclause (6) defines ***public consultation period***.

Division 7.3.5 Ministerial call-in power for development applications

Clause 154 The Minister may, in writing, direct the authority to refer to the Minister a development application that has not been decided by the authority, in which case the authority must take no further action that would lead to a decision on the application. If referral to an entity under clause 145 (Some development applications to be referred) is required or has been done, the authority must give a copy of the Minister's direction to the entity. The authority must give the Minister the information and documents received in relation to the application and any other relevant information and documents held by it.

Clause 155 The Minister may decide an application referred to the Minister if:

(a) it raises a major policy issue; or

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

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

If the Minister decides not to consider the application, the Minister must refer it back to the authority for decision.

Clause 156 If the Minister decides to consider an application, the Minister must tell the authority and the applicant about the Minister's decision and ensure that the Minister has the comments of the authority on the application. The Minister may approve or refuse the application under clause 158 (Deciding development applications). The notice of the decision to consider is a notifiable instrument and must be notified under the Legislation Act not later than 15 working days after the day it is given. Decisions made by the Minister in the exercise of the call in power are not subject to merit review but may be reviewed under the *Administrative Decisions (Judicial Review) Act 1989*.

Clause 157 Not later than 3 sitting days after the Minister decides an application, the Minister must present a statement to the Legislative Assembly setting out the details listed in subclause (2).

Division 7.3.6 Deciding development applications

Clause 158 Subclause (1) states that the authority, or the Minister, if the Minister decides to consider a development application, must:

(a) approve an application; or

(b) approve an application subject to a condition; or

(c) refuse an application.

Action must be taken under subclause (1) not later than the end of the ***prescribed time period*** for the application, which is defined in subclause (4). Subclause (3) sets out the requirements if the development application applies to a registered tree.

Clause 159 If the time for deciding a development application has ended and no decision has been made by the authority, or the Minister, the authority or the Minister may approve the application, even subject to a condition, despite the ending of the time. If no decision is made within the time allowed the authority is taken to have refused the application under the *Administrative Appeals Tribunal Act 1989* (the AAT Act) s24 (6). The note explains neither the authority nor Minister can approve an application if the AAT has decided an application for review of the deemed refusal.
Clause 160 The authority (or Minister) may approve development proposals subject to a condition(s). The decision about conditions must be consistent with this clause 160. The approval of a development application must include any condition that is required to be included by the territory plan and must not include a condition inconsistent with a condition required to be included by the territory plan. The authority (or Minister) can include a condition even though it is not required by the territory plan provided it is not consistent with any condition that is required by the plan. Subclause (3) provides examples of conditions (these do not apply to code track proposals). Under subclause (4) a code track proposal must not be approved subject to a condition unless the condition is prescribed by regulation for this subclause. The authority may approve an amendment to a document under subclause (3) (n) as set out in subclause (5).

Division 7.3.7 Extensions of time for deciding development applications

Clauses 161 to 164 set out the extensions of time for deciding development applications if further information is requested (and the information is provided or insufficient information is provided or no further information is provided) or if a development application is amended. The extension of time only applies if the authority seeks the further information within 10 working days of lodgement of the application.

Division 7.3.8 Notice of decisions on development applications

Clauses 165 and **166** set out to whom the authority must give written notice if a development application is approved or refused, and what each notice must contain – including confirmation of the assessment track that applied.
Clause 167 If an application was referred to an entity, the notice of decision must include a statement about whether the authority followed the entity's advice and if it did not, why. The authority need not do this if satisfied that the advice was not relevant to the application. Pursuant to **Clause 169** the authority must give a copy of its decision on the development application to each entity to which the application was referred.
Clause 168 sets out what the authority must do to comply with its obligation to notify people who made a representation in relation to the application.

Division 7.3.9 Effect and duration of development approvals

Clauses 170 to 178 set out when development approvals take effect. Development approvals take effect when:

(1) there are no representations and no right of review(170)
(2) there is a single representation (171)
(3) there are multiple representations (172)

(4) there is an AAT review (173)
(5) the development includes an activity not allowed by a lease (174)
(6) there is a condition to be met (175)
(7) the development includes an activity not allowed by the lease and a condition is to be met (176); and
(8) a decision on a development application is reconsidered (177)
(9) a decision is reconsidered and there is a right to apply to the AAT for review of the substituted decision (178).

Clauses 179 to 182 deal with the end of development approvals.

Clause 179 This clause applies to a development approval other than an approval, or part of an approval that consists of a lease variation or a development approval or part of a development approval that relates to the use of land, or a building or structure on the land, including beginning a new use or a change of use. Subclause (2) sets out when such development approvals end. Development must start within 2 years of the granting of the approval (or such other period stated in the approval). Development must finish within two years of the beginning of the development (or such other time stated in the approval). The authority may extend the time for finishing the development on application as per subclause (3) and (4). It is not possible to apply for an extension of time to start a development. There are public safety reasons for permitting extension of time to finish, the same reasons do not apply to starting a development.
Clause 180 sets out when a development approval or part of a development approval that consists only of a variation of a lease, ends.
Clause 181 This clause applies to a development approval or part of a development approval that relates only to the use of land, or a building or structure on the land, under a lease (the ***affected lease***), including beginning a new use or a change of use, and does not involve a lease variation. Subclause (2) and (3) set out when such development approvals end. Essentially, unless the approval states otherwise, the approval lasts for the duration of the lease and any further leases. Under subclause (4) a development approval relating to use does not end simply because:
(a) the use is not continuous;
(b) someone deals with the affected lease; or
(c) a further lease is granted.
The authority must tell the registrar-general about the ending of a development approval to which this clause applies if the authority gave the registrar-general notice of the approval and the approval is surrendered to the authority.
Clause 182 sets out when development approvals end that relate only to the use of land under a licence or permit. The approval continues for the life of the lease (even if the use is interrupted, i.e. is not continuous). The approval ends if the licence or permit expires even if the licence/permit is renewed. This means that a new application for an approval may be required in association with a licence or permit renewal.
Clause 183 The authority may revoke a development approval under the circumstances set out in subclause (1) and must notify the registrar–general about the revocation if it gave the registrar–general notice of approval.

Division 7.3.10 Reconsideration of decisions on development applications

Clause 184 defines ***original application***, ***original decision*** and ***reconsideration application***.

Clause 185 If a development application or an application for amendment of an application, is approved subject to a condition, or refused, and it has not been reconsidered previously, and the AAT has not considered an application for review, the applicant may apply for reconsideration of the decision not later than 20 working days after the applicant is told about the decision or any longer period allowed by the authority. Subclause (4) sets out the formal requirements of the reconsideration application. The application must set out the grounds on which reconsideration is sought. This clause does not apply to the refusal of an application or amended application in the code track.

Clause 186 The authority must notify the AAT in writing about an application for reconsideration if the applicant also applies to the AAT for review of the original decision and the AAT gives notice of the application of review to the authority.

Clause 187 The authority must reconsider the original decision not later than 20 working days after receipt of the reconsideration application and may substitute a new decision or confirm its original decision. The period of time may be extended by agreement with the applicant. However, the authority must not take action under subclause (1) (b) if the AAT has decided an application for review of the original decision. Subclause (4) states that the application for reconsideration need not be publicly notified but the authority must give notice to anyone who made representations and allow that person a reasonable time to make further representations. Subclause (5) sets out what the authority must consider. Someone other than the original decision-maker must reconsider the decision.

Clause 188 If the authority does not make a substitute decision or confirm the original decision by the end of the 20 working days (or the period as extended by agreement), the authority is taken to have confirmed its original decision**.**

Clause 189 sets out to whom the authority must give written notice of its decision. The note explains that if the notice is given to a person who may apply to the AAT for review of the decision to which it relates, the notice must comply with the requirements of the code of practice in force under the AAT Act*,* s 25B (1) (see clause 401 (3) (AAT review – general)).

Division 7.3.11 Correction and amendment of development approvals

Clause 190 The authority may correct a formal error in a development approval. Written notice of such must be given to the approval holder(s). Approval holder is defined in the dictionary.

Clause 191 If a development proposal changes after approval has been given so that it is not covered by the previous approval, the approval holder may apply to the authority to amend the approval. Subclause (3) sets out the formal requirements for the application. Whoever signs the application is the applicant.

Clause 192 The authority must consider the application as if the development originally approved had been completed and the application for amendment was an application for approval of a development proposal to change the completed development to give effect to the amendment. The same processes only apply to the amendment, for example, subclause (4)) provides if public notification of the proposed development is required only the application for amendment needs to be

publicly notified. Under subclause (2) the authority must refuse to amend the development approval if the change means the proposal would be in a different assessment track to the original proposal. Also, under subclause (3), the authority must refuse to amend unless satisfied that, after the amendment, the development approved will be substantially the same as the original.

Part 7.4 Developments without Approval

Clause 193 establishes the offence of undertaking development without approval. The maximum penalty for the offence depends on the level of mental element the person has. Intentional acts carry the most serious penalty, a reckless act has a lesser penalty, a negligent act has an even lesser penalty and the strict liability offence carries the lowest penalty. There is a defence to a prosecution under the strict liability offence if a person proves that he/she took reasonable steps to find out or inquire whether the development required development approval. It is an evidential burden on the defendant. This clause does not apply to conduct that is lawful because of clause 197 or 198.

Clause 194 establishes the offence of undertaking prohibited development. As in clause 193, the maximum penalty for the offence depends on the level of mental element the person has. This clause does not apply to conduct that is lawful because of clause 195, 197 or 198 or because it is in accordance with a development approval granted in relation to subclause 134 (2)(a) (Applications for development approval in relation to use for otherwise prohibited development).

Clause 195 If a person undertakes development in accordance with an approval and the development becomes prohibited, clause 194 (1) to (4) does not apply whilst the development is undertaken in accordance with the approval, despite any other provision in the proposed Act.

Clause 196 establishes a strict liability offence if a person undertakes development and does not comply with a condition of the development approval. The maximum penalty of 60 penalty units has been set to reflect the seriousness of the offence and to act as a sufficient deterrent to the impugned behaviour.

Clause 197 This clause applies if a development (other than continuing a use), is exempt from requiring approval and after the development is undertaken the development stops being exempt. The development remains lawful.

Clause 198 This clause applies to the continuing use of land, or a building or structure on the land, if

(a) the use when it began was exempt from requiring approval and remains authorised by a lease, licence, permit or clause 240 (Use of land for lease purpose); and

(b) continuing the use stops being exempt.

Under subclause (4) the use of the land, building or structure, remains lawful despite ending of the exemption provided the use remains authorised by the relevant lease, licence, permit or clause 240 (Use of land for leased purpose). This is the case even if the use is not continuous. If the use is authorised by a lease, the use remains lawful even if the lease is sold (or subject to other dealing) or renewed.

However, subclause (3) states that this protection is lost if: the lease is surrendered (other than under clause 246 (Grant of further leases)) or terminated; or the affected lease expires and no application is made for a further lease under clause 246; or the

use is authorised by a licence or permit and the licence or permit ends (whether on expiry or otherwise, and even if renewed).

Clause 199 provides that a lessee of land may apply for approval for development that required approval but was undertaken without approval. The authority must treat such an application as if the development had not been undertaken.

Chapter 8 Environmental impact statements and inquiries

In defining Environmental Impact Statements (EIS) this chapter complements the information about the impact track assessment track provided in chapter 7. While the ability to require an EIS for major developments existed in section 121 of the Land Act, it was rarely used. An EIS will now be required for major developments. The basic processes of scoping, preparing an EIS and referral to the Minister remain. An EIS is required if the answer is Yes to any of the following:

Is the development listed in schedule 4?
Is the development listed in the territory plan development table for the zone as impact assessable?
Is the development not mentioned in the development table of the territory plan?
Has the Minister for Planning required an EIS to be prepared for the development?
Is the development one to which clause 134 (Applications for development approval in relation to use for otherwise prohibited development) applies?

The process for preparing an EIS will be:

1. At the request of the proponent of a development application, the authority scopes the matters to be addressed in the EIS by preparing a scoping document.
2. The proponent prepares a draft EIS addressing the matters raised in the scoping document.
3. The draft EIS is publicly notified and anyone can make a representation about it.
4. The authority checks that the EIS addresses the matters raised in the scoping document and advises the proponent if there are, in its opinion, outstanding matters that need to be addressed.
5. The proponent has the opportunity to address the outstanding matters and revise the EIS.
6. The EIS and development application are referred to the Minister and the Minister can choose whether or not to present the EIS to the Legislative Assembly.
7. The Minister can establish an inquiry panel within 15 working days of receiving the EIS. The panel has 60 working days to provide a written report.
8. The completed EIS is lodged with the development application and the impact track assessment process commences.

Part 8.1 Interpretation –ch 8

Clause 200 is an interpretative clause and sets out the meaning of ***draft EIS***; ***EIS***; and ***environmental impact statement***; ***inquiry***; ***proponent***; and ***representation*** and ***scoping document.***

Clause 201 states that 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. ***Relevant Minister*** and ***defined decision*** are defined in subclause (2).

Part 8.2 Environmental Impact Statements

Clause 202 An EIS is an environmental impact statement prepared as prescribed by regulation.
Clause 203 sets out when an EIS is completed for the proposed Act. An EIS is completed if the Minister has given the authority notice under clause 219 (Notice of no action on EIS given to Minister), or the Minister has decided not to establish a panel of inquiry under clause 221 (Establishment of inquiry panels), or the Minister has established an inquiry panel and the panel has reported the results of the inquiry or the time for reporting has ended. Irrespective of whether the Minister intends to present the EIS to the Legislative Assembly, the EIS is completed if the criteria in subclause (1) are satisfied.
Clause 204-205 A completed EIS is required if the proposed Act requires it unless the application for development approval is exempted under clause 205.
Clause 206 If the proponent for a development proposal for which a completed EIS is required applies to the authority, the authority must identify the matters that are to be addressed in the EIS in a written notice (the ***scoping document***). A regulation may prescribe entities the authority may or must consult in preparing a scoping document.
Clause 207 The matters identified in the scoping document for a development proposal must include any minimum content for scoping documents prescribed by regulation and the authority may require the proponent to engage a consultant to help prepare an EIS for the proposal. In this section ***consultant*** means a person on a list of consultants prescribed by regulation under clause 417 (Regulation making power).
Clause 208 The authority must give the scoping document for a development proposal to an applicant not later than 30 working days after the day the application is made; or if the chief planning executive allows a further period under subclause (3), the end of the further period allowed. If the chief planning executive considers that extension of the time for scoping is necessary given the complexity of the proposal and the consultation required, the applicant must be notified in writing of the extension.
Clause 209 A scoping document is in force for 18 months starting on the day after the day the document is given to the proponent of the development proposal.
Clause 210 When the authority gives the scoping document to the proponent, the proponent must prepare a draft EIS that addresses each matter raised in the scoping document and give the draft EIS to the authority for public notification.
Clause 211 A draft EIS is publicly notified by putting a notice in a daily newspaper and on the authority website and making copies available for public inspection and purchase. A copy of the document should be made available on the authority website if practicable. The notice must state the document is available for inspection and purchase and how and when representations may be made. The time period for making representations set out in the notice must be at least 20 working days. The authority may extend the period of public consultation.
Clause 212 states that anyone may make a representation about a publicly notified draft EIS. However, a representation must be made during the public consultation period for the draft EIS. A person who makes a representation about a draft EIS may, in writing, withdraw the representation at any time before the authority accepts the

EIS under clause 215 (Authority consideration of EIS). Public consultation period has the same meaning as in subclause 211(2).
Clause 213 Representations must be made publicly available on the authority's website until the EIS is completed or the representation is withdrawn and a copy provided to the proponent.
Clause 214 Once the public consultation period has ended, the proponent must revise the draft EIS and give the revised EIS to the authority. The revised EIS must address each matter set out in the scoping document and the representations made within the public consultation period. The proponent must be able to demonstrate how matters raised during public consultation were taken into account in the revised EIS. Public consultation period has the same meaning as in subclause 211(2).
Clauses 215 If a proponent gives the authority an EIS within 18 months after the scoping document for the proposal is given to the proponent; or if the EIS is not given to the authority within 18 months, and the authority is satisfied there has been no significant change to the circumstances surrounding the proposal that is not sufficiently addressed in the EIS; or if the proponent gives the authority an EIS with a notice under clause 217 (Chance to address unaddressed matters); the authority must accept the EIS if satisfied it sufficiently addresses all matters raised in the scoping document and takes into account timely representations or in any other case, take action under clause 217 to advise the proponent in writing that the EIS is not accepted. Subclause (3) defines ***EIS*** and ***timely representation*** for this clause.
Clause 216 The authority must reject an EIS if the proponent of a development proposal gives the authority the EIS more than 18 months after the scoping document is given to the proponent and the authority is satisfied that there has been a significant change in circumstances and the change is not sufficiently addressed in the EIS. The authority must give the proponent written notice of the rejection.
Clause 217 If the authority is not satisfied that the EIS sufficiently addresses the matters raised in the scoping document, the authority must give the proponent written notice that it does not accept the EIS, the reason why it does not accept it and the period in which the proponent may respond to the notice by providing a revised EIS or otherwise. The period of time for a response must be at least 20 working days.
Clause 218 If the authority accepts the EIS under clause 215 or the time for response to a written notice under clause 217 has ended, irrespective of whether the proponent has responded, the authority must give the EIS to the Minister. Any relevant development application must also be given to the Minister with the EIS.
Clause 219 If the Minister is given an EIS and decides not to present the EIS to the Legislative Assembly under clause 220 or establish an inquiry panel under clause 221, the Minister must give the authority written notice that the Minister has decided to take no action in relation to the EIS. The note explains that an EIS is completed where the Minister has given notice under this section.
Clause 220 The Minister may, but need not, present the EIS to the Legislative Assembly.

Part 8.3 Inquiry Panels

It is the intention of the authority to establish a flexible, informal procedure for public inquiries which does not include many of the features which are provided for in the Land Act. For example, the provisions relating to warrants and contempt are not included in the proposed Act. The inquiry panel will be an 'expert panel' in the sense

that the panel will be comprised of ‘experts’, i.e. the members will have expertise that is relevant to the EIS being inquired into.

Clauses 221 The Minister must decide whether to establish a panel to consider any or all aspects of an EIS given to the Minister no later than 15 working days after the EIS is given to the Minister. The Minister must tell the authority if the Minister decides to establish an inquiry. The note explains that if the Minister decides not to establish a panel and not to present the EIS to the Legislative Assembly, the Minister must give the authority written notice of the decision. The Minister must, in writing, prepare terms of reference for the inquiry, and give the proponent notice of the inquiry. The terms of reference for the inquiry may be varied in accordance with the Legislation Act, s46. The terms of reference, and any variations of the terms of reference, must be notified under the Legislation Act.
Clause 222 sets out how the Minister establishes an inquiry. The Minister establishes an inquiry by preparing written terms of reference, appointing one or more people to the panel and nominating, where appropriate, a person to be the presiding member of the panel. The Minister must appoint persons with the expertise necessary to function, in relation to the EIS being inquired into, as a member of the inquiry panel. The Minister must not appoint the chief planning executive, a member of the authority’s staff, a member of the land agency’s staff or a person prescribed by regulation in relation to the EIS to an inquiry panel for an EIS.
Clause 223 The inquiry panel must report in writing on the result of the inquiry no later than 60 days after the Minister establishes the panel. On application by the panel, the Minister may extend the time for the inquiry to report.
Clause 224 The inquiry panel is independent and must not be directed by the Minister in its findings or recommendations.
Clause 225 Inquiry panel members are not personally liable for anything done, or omitted to be done, honestly and without recklessness in the performance of their duty as an inquiry panel member.

Chapter 9 Leases and Licences

Chapter 9 sets out the process for leasehold administration for the Territory.

Most of the leasing provisions in the Land Act have been incorporated into the proposed Act and remain unchanged. Leasehold is the sole form of land tenure in the ACT and continues to be an important factor shaping Canberra and the surrounding territory. Key changes to the legislation aim to strengthen the leasehold system and ensure it continues to serve the community. Importantly, this includes formalised processes for concessional lease administration, implementing the Government’s December 2005 response to the concessional lease review.

This chapter sets out the process for leasehold administration for the Territory including:
1. general provisions for granting leases – by auction, tender, ballot and direct grant and eligibility for certain classes of lease;
2. grants of further leases providing for the renewal of existing leases prior to their expiry;
3. provisions for regulating dealings in certain leases;

4. concessional leases, including formal arrangements for their identification and administration;
5. lease variations;
6. rural leases and exemptions;
7. certificates of occupancy and compliance;
8. provisions for granting criteria licences over unleased territory (including public land) including the ability to set criteria for such grants;
9. provisions to reserve rights to minerals and the use, flow and control of water resources and subletting of parts of land and buildings.

Part 9.1 Definitions and application –ch 9

Clause 226 is an interpretative clause and sets out the definitions for the chapter. Most of the definitions are largely carried over from the Land Act including: ***building and development provision; consolidation***; ***lessee***; ***market value; nominal rent lease; provision***, ***(of a lease*)**; ***registered lease*** and ***registered proprietor; rental lease; residential lease; rural lease; subdivision; sublease*** and ***sublessee.***
There is a new definition of ***deal*** with a lease, which 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.
Clause 227 Subclause (1) sets out the meaning of ***concessional lease***. This carries over the meaning of ***concessional lease*** from the Land Act
except that a rural lease is not included as a concessional lease under subclause (1)(c)(ii). Subclause (3) defines ***consolidated or subdivided concessional lease, further concessional lease*** and ***regranted concessional lease.***
Clause 228 states that 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

Clause 229 states that the part is subject to part 9.7 (Rural leases).
Clause 230 enables the authority to grant leases on behalf of the Executive that the Executive may grant on behalf of the Commonwealth. Lease is defined in clause 227.
Clause 231 sets out the ways in which leases may be granted by the authority: by auction; tender; ballot or direct grant. Eligibility to be granted a lease by auction, tender or ballot may be restricted under clause 232. Eligibility to be granted a lease by direct grant may be restricted under clauses 233 and 234. A lease granted under this clause must include a statement about whether it is a concessional lease and be lodged with the registrar-general. Under subclause (3) a lease granted under this clause may contain provisions that require the lessee to develop the land within the lease or any other unleased territory land in a stated way, or provide security for the lessee's performance of obligations under the lease.
Clause 232 allows the authority to restrict the class of people eligible for the grant of a lease by auction, tender or ballot by stating that restriction in the relevant notice of auction, tender or ballot.
Clause 233 sets out the various restrictions on the direct grant of leases by the authority. Direct grants cannot be granted unless the grant is in accordance with

criteria prescribed by regulation and approved by the Minister or Executive; or unless the Executive approves the grant as an exceptional case under subclause (2); or unless the grant is in accordance with clause 234 (Direct grant if single person in restricted class).

Under the Land Act there were three provisions for the direct grant of leases (sections 161,163 and 164). Section 161 provided the general power with sections 163 and 164 providing for the direct grant of leases to community organisations and special leases respectively. Special leases were associated with the economic development of the ACT or the development of business in the ACT. The direct grant of a lease under one of these provisions could only be done in accordance with the criteria in a disallowable instrument under the relevant section. In December 2005, as part of its pronouncements on the planning system reform project, the Government recommended that:

1. there be one provision for the direct grant of leases; and
2. the criteria for the direct grant of leases should be reviewed and those criteria should be made publicly available.

As part of achieving greater certainty, clarity and consistency in the land administration system, clauses 233 (Restriction on direct grant by authority) and 234 (Direct grant if single person in a restricted class) implement these recommendations. Under subclause 233 (1) (a) the authority cannot grant a lease by direct grant unless the grant is in accordance with criteria prescribed by regulation and approved by the Executive. Under subclause (1)(b) the Minister can approve the certain classes of direct grant without it being necessary to go to Cabinet, if certain criteria as set out by regulation are met. One such example may be a direct grant of a small parcel of contiguous land. Subclause (2) contains a mechanism to allow the Executive to approve “one-off” direct grants if satisfied that the grant meets one or more of the objectives set out therein. Failure to comply with the criteria prescribed by regulation for this clause will not affect the validity of a lease granted by direct grant.
Clause 234 allows the authority to direct grant a lease without auction, tender or ballot if the authority restricts the people eligible to apply for the grant of a lease by one of those methods and only one person is eligible.
Clause 235 sets out the requirements for giving notice of a direct grant. The authority is required to notify the Minister who in turn must notify the Legislative Assembly within the time limits set out in the clause. Subclause (2) specifies what information is required to be provided by the authority to the Minister. Failure to comply with this requirement will not affect the validity of the lease. Subclause (5) defines ***prescribed information***.
Clause 236 A lease sold by direct grant must be granted subject to provisions that are agreed between the authority and the applicant for the lease.
Clause 237 The authority is not bound to grant a lease and, where applications have been invited subject to conditions and a lease has not been granted, fresh applications may be invited subject to the same or other conditions.
Clause 238 The authority may prepare a planning report in relation to a proposal to grant a lease but must do so if so directed by the Minister.
Clause 239 A lease of Territory land will not be granted for payment that is less than the market value of the lease except for leases that are granted for a rent that is the full market rental value of the lease; a further lease (other than a rural lease) granted

under clause 246 (Grant of further leases); or a further rural lease granted on payment of an amount under clause 273 (Determination of amount payable for further lease – rural land) or the grant of a lease prescribed by regulation for which the amount prescribed by regulation has been paid.

Clause 240 Leased Territory land, or a building or structure on the land, can only be used for a purpose authorised by the lease. Authority to use the land for residential purposes also allows the land to be used for a home occupation or home business. The note explains that beginning a use is development and may require development approval (see clause 7). Regulations may prescribe what makes up use for home occupation and home business.

Clause 241 The authority must not grant a lease of territory land unless there is proper access to it as set out in subclauses (1) and (2). Failure to comply with this clause will not affect the validity of the lease. Subclause (4) defines ***road*** and ***road related area***.

Clause 242 A lease or further lease granted under this chapter does not give rights to the use, flow and control of water under the land comprised in the lease.

Clause 243 Where a person who is entitled to the grant of a lease fails to accept and execute the lease or pay an amount required to be paid before being granted the lease, the authority may end his or her right to the grant of the lease. The written notice ending the person's right to a lease must specify the grounds on which it is given and when it is to take effect. If the authority does not know the residential address of the person to whom the notice is to be given, the authority may give notice by publishing a copy of the notice in a daily newspaper. A person whose right has been ended in accordance with this clause will not have any claim for compensation in relation to the ending of the right or for recovery of any money paid to the authority in respect of the grant of the lease.

Clause 244 restricts dealings in relation to certain leases. Subclause (1) sets out those leases – they include leases which provide the lessee cannot deal with the land or part of the land without the consent of the authority; leases granted under clause 231 (1) by auction, tender or ballot if the class of people eligible is restricted under clause 232; direct grants under clause 231 (1)(d) (except leases granted to the Territory); and leases prescribed by regulation. Note 2 explains that dealings with concessional leases and rural leases, which are not restricted by this clause, are restricted under clause 257 (Restrictions on dealings with concessional leases) and clause 277 (Dealings with rural leases).

Under subclause (2) the lessee or anyone else with an interest in the lease must not, during the ***restricted period*** (as defined in subclause (4)) deal with the lease without the written consent of the authority under clause 245. Subclause (4) states that ***deal***, with a lease, in this clause does not include sublet the lease. A dealing in relation to a lease to which this clause applies, made or entered into without consent, has no effect.

Clause 245 sets out when the authority must not consent to a dealing in relation to a lease. The authority must not consent to a dealing under clause 244 (Restrictions on dealings with certain lease) unless:

(a) satisfied the person to whom it is proposed the lease is to be assigned or transferred, or the person to whom it is proposed to pass possession of the land, is a person who satisfies the criteria prescribed under clause 233 (Restriction on direct grant by authority) in relation to the class of leases in which the lease is included; or

(b) if the lease was originally granted by restricted auction, tender or ballot - satisfied the person to whom it is proposed the lease is to be assigned or transferred, or the person to whom it is proposed to pass possession of the land, is a person who could have been granted the original lease.

Under subclause (2), the validity of a dealing entered into with the consent of the authority is not affected by a defect or irregularity in relation to the giving of the consent or because a ground, or all grounds, for the consent had not arisen.

Part 9.3 Grants of further leases

Clause 246 Where the holder of a lease (the old lease) applies to the authority for the grant of a further lease and neither the Territory or Commonwealth needs the land for a public purpose, the authority must grant the lessee a further lease for a term not longer than:

1. 99 years; or
2. for a rural lease for which a period shorter than 99 years is determined under clause 274 (Fixing period for further leases—rural land) — the shorter period provided:
   (a) the lessee surrenders the old lease before it expires or the old lease expired not more than 6 months before the application for a further lease; and
   (b) all rent due is paid for a lease other than a residential lease; and
   (c) the amount determined under clause 273 is paid; and
   (d) the criteria (if any) prescribed by regulation are satisfied.

A fee for the grant of the further lease may be determined. Any fee payable must not be more than the cost of granting the further lease if the term of the further lease is not longer than the term of the old lease. The further lease must include a statement about whether the lease is a concessional lease and begins on the day after the old lease is surrendered or, for a further lease granted on application after expiry of the old lease – the day after the old lease expires. The granted lease must be lodged with the registrar-general.

Clause 247 The further lease must authorise each use of the leased land and the use of any building or structure on the land, that the surrendered lease authorised unless a change of use of land, or of a building or structure on the land, which involves a lease variation, is applied for at the same time as the application for the grant of a further lease.

Part 9.4 Concessional leases

Division 9.4.1 Deciding whether leases concessional

Clause 248 A lessee may apply to the authority for a decision about whether the lease is a concessional lease.

Clause 249 Upon application the authority must make a decision about whether the lease is concessional or not. The authority must not make a decision under subclause (1) unless the authority has given written notice to each person with a registered interest in the lease; invited representations in the notice and considered any representations made within the stipulated time limit. If a decision has not been made by the authority at the end of the period of 15 working days after the day the period for making representations ends, it is deemed to be a concessional lease and

the lessee may seek review of the deemed decision. Despite a deemed decision that the lease is concessional the authority may decide that a lease is not concessional. The note explains that the authority will not be able to decide the lease is not concessional if the AAT has decided an application for review of the deemed decision. The authority must give written notice of its decision to the applicant and to anyone else with an interest in the lease to which the decision relates.

Clause 250 The authority can decide if a lease is concessional on its own initiative. However, the authority must not make a decision unless the authority has given written notice (the ***lease decision notice***) of its intention to each person with a registered interest in the lease, invited written representations and considered any representations made within the stipulated time limit. Also, if the authority gives a lease decision notice the authority must make a decision no later than 15 working days after the end of the period for making representations. Written notice of the authority's decision must be given to each person with a registered interest in the lease. The notes explain that the notice must comply with the requirements of the AAT Act if the notice is given to a person who may apply to the AAT for review of the decision and that a lessee has a right to apply for review of a decision under this provision.

Clause 251 Where there has been no application made to the AAT for review of a decision that a lease is concessional, or application was made and the AAT confirmed the authority's decision, a notice that the lease is a concessional lease must be lodged with the registrar-general for registration under the *Land Titles Act 1925*.

Division 9.4.2 Varying concessional leases to remove concessional status

Clause 252 This division applies to an application for development approval to vary a lease granted as a concessional lease to remove its concessional status.

Clause 253 sets out what the authority or Minister must consider in deciding whether to approve such an application. Considerations include whether the Territory should buy back, or otherwise acquire, the lease, and any disadvantages to the community.

Clauses 254-255 If the authority or Minister approves the variation of the concessional status of a lease, the lessee must pay the Territory the payout amount determined in accordance with the formula in clause 255.

Clause 256 If a lease is varied only to remove the concessional status by surrender and regrant of the lease, the regranted lease authorises each use authorised under the previous lease. Subclause (2) applies despite anything to the contrary in the territory plan.

Division 9.4.3 Restrictions on dealings with concessional leases

Clause 257 The lessee, or anyone else with an interest in a concessional lease, must not during the term of the lease deal with the lease without the written consent of the authority. A dealing in relation to a lease to which this section applies made or entered into without consent has no effect.

Clause 258 The authority must not consent to a dealing under clause 257 (Restrictions on dealings with concessional leases) unless:

(a) satisfied the person to whom it is proposed the lease is to be assigned or transferred; the person to whom it is proposed a sublease should be granted;

or the person to whom it is proposed to pass possession of the land, is a person (an eligible person) who could be granted the concessional lease; or

(b) for a dealing that is a subletting - satisfied that the lessee or an eligible person continues to be the main user of the lease.

Subclause (2) sets out what the authority must consider in deciding whether the lessee proposing to sublet the lease or an eligible person continues to be the main user of the lease.

Under subclause (3), the validity of a dealing made or entered into with the consent of the authority is not affected by a defect or irregularity in relation to the giving of the consent or because a ground, or all grounds, for the consent had not arisen.

Part 9.5 Rent Variations and relief from provision of leases

Clause 259 Where the rent payable under a lease has been varied, notice of the variation will be given to the lessee in writing. The variation will come into operation 20 working days after the day on which the notice is given or on a later day if specified in the lease.

Clause 260 Where the rent payable under a lease is varied, and the lease does not include a provision for the arbitration of differences between parties as to variation of the rent, the lessee may, not later than 20 working days after receiving the written notice, request that the variation be reviewed by the authority. The request for a review of the variation does not affect the operation of the variation. If a request for review is made, the authority must review the variation and may confirm the variation or set it aside and substitute another variation.

Clause 261 The authority may approve, with or without conditions, a reduction of rent or amount payable under a lease or the grant of relief from compliance with provisions of a lease for a maximum of 3 years. Written notice of the approval must be given to the lessee or occupier of the land. A grant of relief or reduction of rent may include a period preceding commencement of clause 261. Subclauses (6), (7) and (8) expire 1 year after the day this clause commences. Under subclause (8), repeal does not end the transitional effect of subclause (6).

Part 9.6 Lease variations

Division 9.6.1 Lease variations - general

Clause 262 This part is subject to part 9.7 (Rural leases).

Clause 263 sets out the meaning of ***variation*** of a lease for this part.

Division 9.6.2 Variation of rental leases

Clause 264 The authority must not execute a variation of a rental lease unless all rent, including additional rent, has been paid up to the date of the variation. If a variation is executed, the authority must reappraise the rent payable under the lease following the method provided by the lease as far as possible. The reappraised rent is payable from the day the variation is executed. The reappraisal of the rent is not done if the variation is to reduce the rent to a nominal rent or otherwise affects the rental provisions of the lease.

Clause 265 Where the authority agrees to the variation of a lease for which rent is payable, it will determine the amount of rent to be paid by the lessee, give the lessee written notice of the amount determined, the day up to which the amount is calculated and the date for payment.
Clause 266 A lease will not be varied to reduce the rent payable to a nominal rent (5 cents per annum) unless the lease is included in a prescribed class of leases, all rates and land tax are paid, all provisions in the lease requiring the lessee to develop the land have been complied with, and the lessee has paid an amount decided by any policy direction of the Minister. Subclauses (2) and (3) allow the Minister to make policy directions by disallowable instrument. If a lease is varied to reduce the rent to a nominal rate, the varied lease must state that the lessee is to pay the nominal rate each year if and when that rent is demanded. The requirements of this clause are in addition to and not in substitution for the other provisions of the Act relating to the variation of leases.
Clause 267 A lease cannot be varied to extend the term of the lease.
Clause 268 Leases to which clause 244 (Restriction on dealings with certain leases) applies and leases granted in accordance with clause 234 (Direct grant if single person in restricted class) cannot be varied for 5 years except for leases exempted by regulation.

Division 9.6.3 Variation of nominal rent leases

Clause 269 The authority must not execute a variation of a nominal rent lease unless the lessee has paid the Territory any change of use charge worked out by the authority, less any remission under clause 271 plus any increase under clause 272. Under subclause (2) a variation of a lease has no effect if the change of use charge payable under subclause (1) for the variation is not paid.
Clause 270 sets out how the authority works out the change of use charge for a variation of a lease. The lessee is to pay 75% of the increase in the value as set out in subclause (2) and (3).
Clause 271 The authority must remit all or part of a change of use charge for a variation of a lease under clause 269 in the circumstances prescribed by regulation.
Clause 272 The authority must increase a change of use charge for a variation of a lease under clause 269 in the circumstances prescribed by regulation.

Part 9.7 Rural Leases

Note: Improvement in relation to rural leases has a special meaning – see clause 281 (Definitions – pt 9.8).

Division 9.7.1 Further rural leases

Clause 273 The Minister may make a determination for clause 246 (1)(e) (Grants of further leases) for the amount payable for a further rural lease. A determination is a disallowable instrument. If the Minister has not made a determination under this clause, the amount that is taken to have been determined for a rural lease is the market value.
Clause 274 The Minister may make a determination to fix the term for a further rural lease. Under subclause (2), if the national capital authority has set a maximum term for a rural lease in a designated area, the term for a further rural lease of land cannot

exceed that maximum term. A determination for a further rural lease of land is a disallowable instrument.

Division 9.7.2 Exceptions for rural leases

Clause 275 sets out the definitions for division 9.7.2 including ***discharge amount*** and ***holding period***.
Clause 276 The authority may only grant a rural lease, a further rural lease, vary a rural lease or consent to the assignment or transfer of a rural lease, if the person to whom the lease is to be granted, assigned or transferred, or whose lease is to be varied, has entered into a land management agreement with the Territory. The agreement must be in a form approved by the Minister and signed by the conservator of flora and fauna and the person. The agreement may contain a provision allowing the agreement to be varied other than by agreement between the parties. Clause 278 contains exceptions to this clause.
Clause 277 applies to any rural lease granted under clause 231 (Granting leases) and the grant of a further lease of a rural lease. It stipulates that a lessee or anyone else with an interest in a rural lease cannot deal with the lease without the written consent of the authority. A dealing without consent has no effect. Subclause (4) sets out the circumstances when the authority must not consent to a dealing. For the purposes of subclause (4), ***child*** is defined in subclause (7). A dealing with the consent of the authority is not affected by a defect or irregularity in relation to the giving of the consent or because a ground, or all grounds, for the consent had not arisen. A person need not pay a discharge amount more than once under this clause. The application of this clause is extended by clause 444. Clause 278 contains exceptions to this clause.
Clause 278 Clauses 276 and 277 do not apply to the transfer or assignment of a lease or interest in a lease if the lessee has died; or the transfer/assignment is made pursuant to orders adjusting the property interests of parties in a domestic relationship; or by the operation of bankruptcy or insolvency. The note explains that the person to whom the lease, or interest, has been transferred or assigned must enter into a land management agreement.
Clause 279 If a lease, part of the lease or an interest in the lease, to which clause 276 or clause 277 applies has been transferred or assigned to someone (the ***interest holder***) who has not entered into a land management agreement, that person must enter into a land management agreement for the rural land not later than 6 months (or any extended period) after the day the lease, part of the lease or interest, is transferred or assigned to the interest holder. The note explains the authority may extend the period after the end of the period being extended.
Clause 280 The authority must not consent to the consolidation or subdivision of a lease to which clause 277 applies during the holding period.

Part 9.8 Leases-Improvements

Clause 281 defines ***improvement***, ***lessee*** and ***undertaken***.
Clause 282 specifies that this Part applies only to an improvement undertaken in a way that is consistent with the law of the Territory, and with any lease over the land, except an improvement undertaken or acquired by the Territory or Commonwealth unless the Territory or Commonwealth is entitled to receive payment for the improvement.

Clause 283 A lessee granted a further lease is not liable to pay the authority for improvements on the land made prior to regranting of the lease.
Clause 284 If, at the expiry of a lease of land upon which there are improvements, the lessee is not granted a further lease of the land or is granted a lease of only part of the land, and there is no provision in the lease that limits rights to payment for improvements, then the authority will pay the lessee for the improvements in accordance with subclause (2).
Clause 285 The amount payable to a lessee under clause 284 will be reduced in circumstances where the lessee has not elected within 6 months of expiry of the term of a lease to take a further lease of land declared by the authority, prior to expiry of the lease, to be available for a further lease. The amount of expenditure reasonably incurred by the Territory, the authority, or both, in granting the lease to anyone else will be deducted from the amount payable to the lessee under clause 284.
Clause 286 Where a lease is surrendered or terminated, compensation will be payable under this clause as if the lease had expired on the day the lease was surrendered or terminated. This clause applies only if the building covenant in the lease has been complied with and improvements to land on the lease were not precluded or limited by the lease. Costs of the surrender or termination will be deducted from the amount paid.
Clause 287 If the authority withdraws all or part of the leased land from the lease before the end of the term of a lease, compensation will be payable as if the lease had ended on the day of the withdrawal. This clause only applies if the building covenant in the lease has been complied with and improvements to land on the lease were not precluded or limited by the lease.
Clause 288 sets out how the value of improvements are decided. The terms ***assessment day*** and ***market value*** are defined for the purposes of this clause. Where compensation is payable, the authority must decide, as soon as practicable after the assessment day, the market value of the improvements on the land as at the assessment day. Where a lessee is not granted a new lease of all of the land, improvements will be valued as though all of the land had been leased on the same terms as before. Where a lease is surrendered or terminated, improvements will be valued as though the lease had not been surrendered or terminated. Similarly, if the authority withdraws all or part of the leased land from the lease, improvements will be valued as though the land had not been withdrawn.

Part 9.9 Leases – certificates of compliance and building and development provisions

Clause 289 Subject to clause 290 the authority must, on application by the lessee and payment of a fee, if determined, issue a certificate stating that the building and development conditions of a lease have been complied with. A certificate may be issued for part compliance. Such a certificate may be issued subject to a condition that the lessee provides security against failure to complete the outstanding work.
Clause 290 A certificate under clause 289 will not be issued for a lease granted under the *Unit Titles Act 2001* unless the authority is satisfied that all other leases in the subdivision have also satisfied the building and development provision, or a certificate of compliance has been issued in relation to the provision; or that the occupier of the unit held under the lease will not be substantially inconvenienced by the works being carried out in the subdivision. Subclause (3) defines ***substantially inconvenienced***.

Clause 291 Where a lease contains a building and development provision, the lease or an interest in the lease cannot be mortgaged unless the lessee has obtained a certificate of compliance, or unless the mortgage is required to enable the lessee to repay money borrowed to acquire the lease or to enable the lessee to secure money to acquire the lease or interest, or to allow the lessee to comply with a building and development provision of the lease.
Clause 292 Where a lease contains a building and development provision, the lease or an interest in the lease cannot be assigned or transferred, either at law or in equity, unless the lessee has died; the transfer or assignment is made in accordance with any of the orders set out in subclause (1)(b); the transfer or assignment is a result of bankruptcy or insolvency or the lessee has a certificate of compliance under clause 289. However, the authority may in writing consent to a transfer or assignment if satisfied the proposed assignee or transferee intends to comply with the building and development provision; and provides the security required by the authority for compliance with the provision; and the authority is satisfied either that the lessee cannot comply for personal or financial reasons with the provisions, or the proposed transferee or assignee (***the homebuyer***) has a contract with the person (***the builder***) proposing to assign or transfer the lease and under the contract, the builder is required to build a home on the leased land for the proposed assignee or transferee. Under subclause (3) the authority may also consent to a transfer of a lease containing a building and development provision if the 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. In deciding whether to consent, the authority must take into consideration any matters prescribed by regulation.

Part 9.10 Surrendering and termination of leases

Clause 293 If a lease is surrendered or terminated, the authority may authorise the payment of the amount prescribed by regulation to the person who is surrendering the lease or the person whose lease has been terminated. The payment of an amount under this clause must be in accordance with criteria prescribed by regulation.
Clause 294 A person may surrender a lease or part of a lease at any time with the consent of the authority. The authority may accept the surrender with or without conditions. The surrender does not entitle the lessees to a refund or remission of any rent already paid or owing.

Part 9.11 Licences for unleased land

Clause 295 provides the Executive with the power to determine criteria for the grant of licences to occupy or use unleased land. A determination is made by disallowable instrument.
Clause 296 sets out the details to be provided in an application to the authority for a licence to occupy or use unleased territory land. Under subclause (2)(c) the custodian for the subject land must give written consent to the issue of the licence applied for.
Clause 297 The authority may grant the licence to occupy or use unleased territory land upon application but, where the land is public land, must not do so unless the conservator of flora and fauna has recommended that the application be approved.

Clause 298 A licence must be granted in writing and state the period for which it is granted. The licence applies to the person to whom it is granted and is subject to any conditions stated in it.
Clause 299 specifies the circumstances when a person need not have a licence to occupy or use unleased land.

Part 9.12 Leases and licences – miscellaneous

Clause 300 Except in certain circumstances, land held under a lease is to be held as one undivided parcel. Under subclause (2) the land in a lease may be sublet and the lease, or any interest in it, may be assigned, transferred or mortgaged, unless a provision of this chapter provides otherwise.
Clause 301 Subject to the lease, any sublease, and the proposed Act, any part of a building on land may be sublet separately from the remainder of the building. If part of a building is sublet, any part of the land with the building on it may be sublet with the part of the building as long as that part of land adjoins the part of the land with the building on it. Nothing in this section prevents the subletting of a whole building.
Clause 302 With the exception of land covered in clause 303, parts of land in a lease cannot be sublet without the authority's prior written approval. The approval must be in accordance with criteria prescribed by regulation. This section does not operate to prevent development in accordance with the proposed Act on land that is sublet.
Clause 303 Where a lease authorises land to be used as a mobile home park and part of the land is being used, or is intended to be used, for siting of a mobile home that part may be sublet separately from the remainder of the land. Subclause (3) defines ***mobile home*** and ***mobile home park***.
Clause 304 A reservation of minerals contained in a lease must be read as a reservation of all minerals and mineral substances, referred to in the clause, which are found in or on the land.
Clause 305 sets out the application of the *Freedom of Information Act 1989* to access to lease documents and development agreements.
Clause 306 The authority may demand that an ***unlawful occupier*** (a person who has been a lessee or licensee and who remains in possession of land after a lease or licence has ended or been surrendered) give the land to the authority within a reasonable period stated in the notice. If the demand is not complied with, the authority can apply to the Magistrates Court for an order and the court may issue a warrant for a police officer to enter the land and, by reasonable force, give possession of the land to the authority. Subclause (4) defines ***licence*** for this section.

Chapter 10 Management of public land

Chapter 10 sets out how public land in the Territory is to be managed. Management objectives for public land are detailed in the proposed Act. The provisions in the proposed Act are largely carried over but updated from the Land Act. One change is to the conservator of flora and fauna's primary role in relation to the preparation and amendment of plans of management for public land. This will now be the primary responsibility of the custodian which is defined in clause 326 (What is a *custodian*?). The conservator must, however, be consulted and may also initiate amendments to plans of management.

The proposed Act aims to promote clarity, consistency and more effective management of public land. A new requirement under the proposed Act is that the authority must create and maintain a custodianship map that identifies, and gives administrative responsibility for, unleased land and public land in the ACT. The proposed Act provides more information about the responsibilities and role of the custodian, which includes signing development applications in relation to public land or unleased land (see clause 136 (2)(b)(ii)).

Part 10.1 Interpretation- ch 10

Note Licences over public land are granted under pt 9.11.

Clause 307 defines ***management objectives***, ***plan of management*** and ***variation*** of a plan of management. For the definition of custodian and custodianship map see clauses 326 and 327.

Part 10.2 Providing for public land

Clause 308 The custodian for an area of unleased land or the conservator of flora and fauna may recommend to the authority that the territory plan be varied to identify an area of land to be identified as public land for a purpose set out in clause 309 (Reserved areas – public land). The custodian or conservator may also recommend that an area already reserved as public land either be varied in size, shape or purpose, or that it cease to be designated as public land.

Part 10.3 Management of public land

Clause 309 specifies the purposes for which public land may be reserved in the territory plan.
Clause 310 specifies that an area of public land must be managed in accordance with the management objectives applying to the area and any plan of management for the area.
Clause 311 Subclause (1) defines the management objectives for an area of public land as those set out in schedule 3 and those stated by the conservator of flora and fauna pursuant to its power under subclause (2). A determination of management objectives is a disallowable instrument. Subclauses (4) and (5) indicate how to deal with any inconsistencies between the application of 2 management objectives stated in schedule 3 in relation to an area of public land and between a management objective in schedule 3 and a management objective stated by the conservator. Subclause (6) defines ***natural environment*** for the purposes of schedule 3.

Part 10.4 Plans of management for public land

Clause 312 sets out the meaning of ***proponent***.
Clause 313 A plan of management must include a description of the area of public land to which it applies and the manner in which the objectives are to be implemented or promoted.
Clause 314 It is the custodian's responsibility to prepare a draft plan of management as soon as practicable after the area is identified as public land. In doing so, the custodian must consider any comment by the conservator of flora and fauna or the

authority and explain to the Minister why any comments by the conservator or the authority were not incorporated in the draft plan of management. The custodian may update an existing management plan if the custodian considers it outdated.

Clause 315 The custodian or conservator may prepare a draft variation of a plan of management in the same manner as a draft plan of management. The conservator cannot do so unless the conservator has consulted the custodian of the area. Under subclause (3) this part applies to a draft variation of a plan of management as if it were a draft plan of management.

Clause 316 The Minister may, at any time before a draft plan of management is approved, direct that a planning report or strategic environmental assessment be completed for any aspect of the draft plan. The Minister may do so on the Minister's own initiative or by request from the conservator of flora and fauna. In preparing or revising a draft plan of management, the proponent must consider any relevant planning report or strategic environmental assessment.

Clause 317 The public consultation procedures to be followed are set out for those plans of management to which the clause applies. The proponent must make copies of the final draft plan available to an appropriate Legislative Assembly committee and for public inspection at places stated in a written notice. The written notice is a notifiable instrument and must invite representations (which are to be submitted by the specified period of time) and be published in a daily newspaper.

Clause 318 The proponent of a draft plan of management may revise it after considering any written representations or to correct any formal error.

Clause 319 The proponent must submit a draft plan of management, whether revised or otherwise, to the Minister for approval. Written reports about any issues raised in any comments about the draft plan and the proponent's consultation with the public and anyone else about the plan must be submitted with the draft. If comments by the authority or conservator are not incorporated into the plan, a written explanation must also be submitted explaining their exclusion.

Clause 320 When the Minister receives a draft plan of management he must give a copy of the draft plan and any accompanying reports to an appropriate committee of the Legislative Assembly within 5 working days.

Clause 321 The Minister's powers in dealing with a draft plan of management are set out. The Minister must consider any recommendation by the committee of the Legislative Assembly to which the plan was submitted and will approve the plan in the form in which it is submitted or refer the plan to the proponent together with written directions as set out in subclause (3)(b). A direction under subclause (3)(b)(iv) or (3)(b)(v) is a notifiable instrument.

Clause 322 If the Minister refers a draft plan of management to the proponent under subclause 321 (3) (b), the proponent will comply with that direction if a direction is given under subclause 321 (3)(b) (i); revise the plan if the proponent thinks fit; and revise the draft to correct any formal error. The proponent must then resubmit the draft plan for approval together with a written report that addresses the proponent's compliance with any directions and any revision of the draft plan.

Clause 323 Where the draft plan of management is deferred under clause 320 (3)(b) (iv) and the date arrives, or the event happens stated in the deferral for revival of the plan, the proponent will publish a notice (which is a notifiable instrument) stating that the draft plan is revived. The notice must also be published in a daily newspaper.

Clause 324 An approved plan of management is a disallowable instrument. Subclause (2) sets out when the plan of management commences.

Clause 325 The custodian of the land must review a plan of management every 10 years and if satisfied that the plan is no longer appropriate, prepare a draft variation of the plan of management for the land.

Part 10.5 Custodianship map

Clause 326 A ***custodian*** for an area of land is an administrative unit or other entity with administrative responsibility for the land in the custodianship map. The note explains that an entity includes an unincorporated body and a person (including a person occupying a position) (see Legislation Act, dict, pt 1).
Clause 327 The authority must create and maintain a ***custodianship map*** that identifies, and reflects which agency has administrative responsibility for, unleased land and public land in the ACT. The map may include anything else that the authority considers appropriate.

Part 10.6 Leases for public land

Clause 328 defines ***defined period*** and ***future public land***.
Clause 329 Except as provided by clause 330, the authority will not grant a lease of public land or of future public land during the defined period.
Clause 330 On the written recommendation of the conservator of flora and fauna, the authority may, even during the defined period, grant a lease for all or part of an area of public land except where the land has been reserved under the plan as a wilderness area. Similarly, the authority may grant a lease of future public land unless the land is reserved as a wilderness area.

Part 10.7 Public land –miscellaneous

Clause 331 A miner's right may not be granted in respect of public land.

Chapter 11 Controlled activities

This chapter includes a range of measures to investigate complaints and take action on controlled activities, which are activities identified in schedule 2 or by regulation. Controlled activities and associated penalties are set out in schedule 2 of the proposed Act and include things like failure to comply with a lease, developments that do not meet approval requirements, developing without approval, unapproved structures and unauthorised use of unleased Territory land. The authority can issue a controlled activity order on its own initiative or as a result of a complaint.

Many provisions of the Land Act have been carried over into the proposed Act including orders, rectification notices, prohibition notices, injunctions and infringement notices.

The proposed Act provides for a new, clearly defined process for complaints under part 11.2. There is guidance as to when and how a complaint can be made and the role and responsibilities of the authority if a complaint is made. A complaint can be referred to another entity by the authority allowing more efficient use of agency resources.

Part 11.1 – Interpretation – ch 11

Clause 332 defines ***complainant***, ***controlled activity*** and ***controlled activity order.***

Part 11.2 Complaints about controlled activities

Clause 333 Anyone who believes a person is conducting or has conducted a controlled activity may complain to the authority.
Clause 334 sets out the formal requirements for making a complaint. Complaints must be in writing, although the authority may accept a verbal complaint. If the authority accepts a complaint that is not in writing, the authority must require a complainant to put a complaint in writing unless there is good reason for not doing so.
Clause 335 specifies that a complainant may withdraw a complaint by written notice at any time. The authority may continue to act on the complaint if it considers it is appropriate. If a complaint is withdrawn the authority need not comply with clause 338 (Action after investigating complaints).
Clause 336 The authority may require a complainant to give further information about the complaint at any time. A reasonable period should be allowed for the provision of the information and the period of time may be extended. If the information is not provided the authority may, but need not, take further action in relation to the complaint.
Clause 337 The authority must take reasonable steps to investigate each complaint made under clause 334.
Clause 338 sets out what actions the authority can take after investigating a complaint, including taking any action that the authority considers appropriate. The authority must give written notice to the complainant about what action it decides to take. The authority can take certain actions on its own initiative. Subclause (4) defines for the section ***constructions occupations licensee***, ***disciplinary ground*** and ***rectification work***.
Clause 339 explains what the authority must consider in deciding to take no further action on a complaint. Note 1 explains that the authority may also take no further action where a complainant has not complied with a requirement under subclause 336 (1).
Clause 340 sets out what the authority must give to another entity if it refers the complaint to the entity.
Clause 341 The authority may use information found during an investigation of a complaint in deciding whether to make a controlled activity order, whether on the authority's own initiative or on application, under part 11.3 (see below).

Part 11.3 Controlled activity orders

Division 11.3.1 Controlled activity orders on application

Clause 342 defines ***show cause notice***.
Clause 343 A person may apply to the authority for a controlled activity order against a lessee or occupier of a place and/or anyone by whom or on whose behalf a controlled activity was, is being, or is to be, conducted. Subclause (2) sets out the formal requirements for the application. The authority must give written notice (the ***show cause notice***) of the application as set out in subclause (3). Subclauses (4)

and (5) set out the formal requirements in relation to the show cause notice. A person is not prevented from applying for a controlled activity order only because the person has made a complaint in relation to the same matter.
Clause 344 The authority must consider any response to the show cause notice in deciding to make a controlled activity order. The authority can decide to make an order of the kind sought or a less burdensome order or not to make an order. The order may be directed to the person against whom it is sought and/or any other person the authority thinks appropriate. If the authority fails to decide an application before the end of the period prescribed by regulation, it is deemed to be refused.

Division 11.3.2 Controlled activity orders on authority's initiative

Clause 345 defines ***show cause notice*** for division 11.3.2.
Clause 346 If the authority proposes on its own initiative, whether because of a complaint under part 11.2 or otherwise, to make a controlled activity order it must give written notice (the ***show cause notice***) of its intention as set out in subclause (2). Subclauses (3) and (4) set out the formal requirements of the show cause notice.
Clause 347 If the authority gives a show cause notice and has not made a decision about making a controlled activity order within the time prescribed by regulation, the authority is taken to have decided not to make the order. The authority cannot subsequently make the order without issuing another show cause notice.
Clause 348 The authority must consider any response to the show cause notice in deciding to make a controlled activity order. The authority may make the order or decide not to make it. The order may be directed to the person mentioned in the show cause notice and/or to a person mentioned in clause 346 (2) if the authority considers it appropriate.

Division 11.3.3 Ongoing controlled activity orders

Clause 349 defines an ***ongoing controlled activity order***. A controlled activity order remains in force for a stated period of 2 years, but not longer than 5 years.
Clause 350 sets out when an ongoing controlled activity order can be made. The authority can make an order under application or on its own initiative. An ongoing order can not be made unless the order relates to failing to keep a leasehold clean, the order is directed at a named person, each named person has contravened two or more previous orders relating to failing to keep the particular leasehold clean and at least two of the contraventions occurred in the last 5 years.

Division 11.3.4 Provisions applying to all controlled activity orders

Clause 351 sets out the formal requirements of controlled activity orders. Subclause (3) sets out the types of directions that can be made.
Clause 352 sets out to whom notice must be given by the authority if the authority makes a controlled activity order. Where a notice is issued under clause 401 (AAT review – general) separate notice of an order under this section need not be given. Subclause (3) defines ***protected tree***.
Clause 353 A controlled activity order binds each person to whom it is directed. If a lessee or occupier of a place is bound by the order, subsequent lessees and occupiers are also bound, unless otherwise provided by the order.

Clause 354 A person commits an offence and is subject to the maximum penalty set out in schedule 2 column 3 if the person contravenes a controlled activity order. It is a strict liability offence.
Clause 355 If a complaint is made and as a result, the authority makes a controlled activity order directed to a person and that person appeals to the AAT for review of the decision, the authority must advise the complainant in writing of the appeal.
Clause 356 A controlled activity order operates until it is revoked or ends in accordance with the order. A person bound by an order other than an ongoing order may apply to the authority to have it revoked stating the grounds on which it should be revoked. The authority may revoke the order if satisfied on reasonable grounds the order is no longer necessary or appropriate.
Clause 357 If a controlled activity order ends otherwise than by being revoked, the authority must notify the registrar–general in writing of the ending of the order. If an order is revoked all persons given notice of the order must be notified in writing by the authority.

Part 11.4 Rectification work

Clause 358 defines ***authorised person*** and ***rectification work***. Rectification work means work to ensure compliance with a development approval or the conduct of an activity under a controlled activity order that was not carried out within the period stated under the order. Rectification work in relation to an authorised person is work that person is authorised to carry out.
Clause 359 empowers the authority to direct a lessee or occupier or anyone by whom or on whose behalf a controlled activity was or is being conducted to carry out rectification work. Subclause (2) specifies who must be given notice of the direction. Subclauses (3) and (4) specify the formal requirements of the notice. The clause applies whether or not a proceeding for an offence against this chapter has been begun or is about to begin.
Clause 360 A person commits an offence if the person contravenes a direction to carry out rectification work. The maximum penalty is a fine of 60 penalty units. It is a strict liability offence. The proposed Act states that a territory authority may not be prosecuted under this clause.
Clause 361 The authority may authorise a person (***an authorised person***) to enter a place subject to a notice to carry out rectification work to carry out the work required by the notice if the work has not been completed by the period of time specified in the notice. Authorisation cannot be given until any appeal period in relation to the notice expires or, if an application for review is made to the AAT, until the decision is upheld by the AAT or the application is withdrawn.
Clause 362 Work carried out by an authorised person must be in accordance with the directions of an inspector. Subclause (2) lists examples of the work that may be carried under this clause. Anything removed from the premises which is not required to be returned may be disposed of.
Clause 363 an authorised person may only enter a premises to carry out rectification work with the consent of the occupier.
Clause 364 provides for the recovery by the Territory of the reasonable cost of any rectification work carried out by an authorised person.
Clause 365 enables the authority to determine circumstances when a lessee may defer payment of the cost of rectification work (wholly or partly). A determination is a notifiable instrument.

Clause 366 enables a lessee to apply for deferral of part or all costs of rectification work. The application must state the grounds for the application.
Clause 367 The authority may declare that all or part of the cost of rectification work payable by a lessee is deferred. The declaration can be made on the authority's own initiative or on application under clause 366. Subclause (3) sets out the formal requirements of the declaration.
Clause 368 The authority must lodge a declaration under clause 367 with the registrar–general for registration and give a copy of the declaration to the lessee and anyone else with an interest in the leasehold. The Territory is taken to be a person claiming an interest in the leasehold and the registration creates a charge over the leasehold. This type of registered charge does not give a power of sale.
Clause 369 sets out the process for revoking and de-registering a deferral declaration once the cost has been fully paid. The charge is discharged upon registration of the revocation. The lessees of charged leasehold are liable separately and together for the payment of the charge. A registered charge does not give a power of sale over the leasehold to which it relates.

Part 11.5 Prohibition notices

Clause 370 Subclause (1) provides for the authority to give a prohibition notice to prevent an entity from starting or continuing prohibited development, or undertaking development when it has not been approved, or undertaking development not in accordance with the conditions of the approval. This clause applies to any of these activities whether or not a controlled activity order has been made, or is proposed, or a proceeding for an offence against this chapter in relation to the activity has begun or is about to begin. The authority may give a prohibition notice to a lessee or occupier of a place to which the activity in subclause (1) relates or anyone by whom or on whose behalf the activity was, is being, or is to be, conducted, or is likely to be conducted. Subclause (4) sets out the formal requirements of a prohibition notice. Such a notice has effect when it is given to the person to whom it is directed. Two or more prohibition notices may be given in relation to the same activity.
Clause 371 creates a strict liability offence for carrying out an activity that has been prohibited by a prohibition notice. The maximum penalty for the offence is a fine of 60 penalty units. Subclause (2) creates a strict liability offence for carrying on an activity otherwise than in accordance with the prohibition notice. The maximum penalty for the offence is a fine of 60 penalty units.
Clause 372 A prohibition notice ends in accordance with the notice or when the notice is revoked, whichever is the earliest.
Clause 373 A person, the subject of a prohibition notice, may apply to the authority to have it revoked stating the grounds on which revocation is sought. The authority may revoke the notice if satisfied on reasonable grounds the notice is no longer necessary or appropriate.

Part 11.6 Injunctions, terminations and ending leases and licences

Clause 374 The authority, or anyone else, may apply to the Supreme Court for an injunction where a person has engaged or is engaging or proposes to engage in conduct that was, is, or could be, a contravention of a controlled activity order or prohibition notice. The Supreme Court may grant an injunction restraining a person

from engaging in particular conduct or requiring the person to carry out other actions if:

(a) satisfied the person has engaged in the conduct regardless of whether the Court considers the person intends to engage again or continue to engage in the conduct, or

(b) it appears to the Court that it is likely the person will engage in the conduct whether or not the person has previously engaged in the conduct and whether or not there is imminent danger of substantial damage to someone else.

This clause applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

Clause 375 The authority may terminate a lease if the lessee has breached either the provisions of this chapter or the provisions of the lease and the authority has given notice of termination (a ***termination notice***) under clause 377. Copies of the termination notice must be given to the lessee, the registrar-general and any persons with a registered interest in the lease. A termination takes effect 10 working days after the day the notice is given. The validity of the termination of a lease is not affected by a failure to comply with subclause (4).

Clause 376 The authority may terminate a licence by written notice to the licensee if the licensee has breached either the provisions of this chapter or the provisions of the licence and the authority has given notice of termination (a ***termination notice***) under clause 377. Termination takes effect 5 working days after the notice is served.

Clause 377 The authority must not terminate a lease or licence unless it has informed the lessee or licensee by written notice that it is considering terminating the lease or licence. For termination of a lease, the authority must also provide each person with a registered interest with a copy of the notice. The notice must explain the grounds on which the authority is considering taking such action and invite the lessee or licensee to notify the authority not later than 15 working days after notice is received why the lease or licence should not be terminated. Any reasons given by the lessee or licensee for not terminating the lease or licence are to be taken into account before termination of the lease or licence.

Part 11.7 Controlled activities – Miscellaneous

Clause 378 makes it an offence to cause or threaten detriment to someone else because that person has complained under part 11.2 or made an application for a controlled activity order under part 11.3 or because the first person believes such applications will be made. The maximum penalty is a fine of 50 penalty units, imprisonment for 6 months or both. Subclause (2) makes it an offence to threaten or intimidate someone with the intention of causing that person not to make a complaint or application or to withdraw a complaint already made. The maximum penalty is a fine of 50 penalty units, imprisonment for 6 months or both.

Chapter 12 Enforcement

Chapter 12 sets out the enforcement procedures under the Bill including the powers of inspectors to enter premises, their powers upon entry and to seize things. There are provisions in relation to the obtaining and execution of search warrants as well as for the return and forfeiture of things seized. Inspectors must minimise inconvenience and damage in the exercise of their functions and a person may claim compensation from the Territory for loss or expense suffered.

There are provisions in part 12.4 giving the authority wide powers to obtain information or documents reasonably required by the authority for the administration or enforcement of the Act.

Part 12.1 General

Clause 379 defines ***connected***, ***occupier***, ***offence*** and ***premises*** for this part.

Part 12.2 Inspectors

Clause 380 The authority may appoint an inspector.
Clause 381 An inspector will be issued an identity card. Subclause (2) sets out what the identity card must show. A maximum penalty of 1 penalty unit is provided for failure by an inspector to return an identity card when that person ceases to be an inspector and does not return the identity card within 5 working days of ceasing to be an inspector. It is a strict liability offence.

Part 12.3 Powers of inspectors

The note for part 12.3 explains that an inspector, and anyone assisting the inspector, must take reasonable steps to minimize damage in the exercise of their function under the proposed Act. The Territory may be liable to pay compensation for any damage caused.

Clause 382 The powers of inspectors for the purposes of this part are set out. An inspector may enter a place, at any time, with the occupier's consent; or in accordance with a search warrant; or enter, at any reasonable time, premises the public are entitled to enter or use without payment of a fee or charge. An inspector is not, however, entitled to enter any part of a premises the public are entitled to use or enter where that part is being used solely for residential purposes. An inspector may also enter land around premises to obtain consent to enter the premises whether or not someone is on the premises when the inspector announces his/her presence.
Clause 383 An inspector must leave premises if he/she does not produce his identity card when asked by the occupier.
Clause 384 When seeking to enter premises, an inspector must produce his or her identity card and inform the occupier of the occupier's right to refuse the inspector entry, the purpose of the entry and that anything found and seized may be used as evidence in court. The inspector must obtain the occupier's written acknowledgement that the inspector has performed his or her duty in this regard and that he/she consents to the entry. The inspector must provide a copy of a signed acknowledgement to the occupier. If the issue of consent arises, a court must find there was no consent to entry where that acknowledgement is not produced and it is not proved the occupier consented to the entry.
Clause 385 The general powers of an inspector upon entering a place for inspection are set out in this clause. A maximum penalty of 50 penalty units applies if a person fails to take reasonable steps to comply with a requirement under subclause (1)(e) to give the inspector reasonable help to exercise a power under this part.
Clause 386 provides a specific power to an inspector to require a person to provide details of his/her name and address if the inspector believes on reasonable grounds

that an offence is being, or has just been, committed against the proposed Act. Subclauses (2) and (3) outline the inspector's responsibilities in this regard. A maximum penalty of 10 penalty units applies if a person does not provide the details when requested and the inspector has complied with the requirements in subclause (4). The offence is a strict liability offence. Subclause (6) defines for the section ***home address***.

Clause 387 The powers of an inspector upon entering a place and responsibilities after entry for inspection are set out in this clause. Subclause (5) creates a strict liability offence if a person interferes, without an inspector's approval, with a seized thing to which access has been restricted under subclause (4). The maximum penalty is a fine of 50 penalty units. The offence is a strict liability offence.

Part 12.4 Information requirements

Clause 388 If the authority suspects on reasonable grounds that a person has knowledge or documents required by the authority for the administration or enforcement of the proposed Act, the authority may give the person a notice requiring the person to give the authority the information or documents. Subclause (3) sets out the formal requirements of the notice. A person does not incur any civil or criminal liability only by providing the information as required.

Clause 389 The authority may make copies of, or take extracts from documents produced and must return the original to the person who produced the document as soon as practicable.

Clause 390 makes it an offence to intentionally contravene a requirement of an information requirement. The maximum penalty is a fine of 100 penalty units.

Part 12.5 Search warrants

Clause 391 An inspector may apply to a magistrate for a warrant to enter premises. The application must be sworn and state the grounds on which it is sought. The magistrate may refuse to give a warrant until the inspector has provided all the information that the magistrate requires. The grounds on which a magistrate may grant a warrant are set out in subclause (4). Subclause (5) sets out the formal requirements for the warrant.

Clause 392 In special or urgent circumstances an inspector may apply for a warrant by phone, fax, radio or other form of communication. An application must be prepared but need not be sworn before applying for the warrant. After issuing the warrant, the magistrate must fax a copy to the inspector as soon as practicable. If faxing is not possible, the magistrate must tell the inspector the terms of the warrant and date and time of issuing the warrant and the inspector must complete a form of warrant. The faxed copy or the warrant form authorises entry and the exercise of the inspector's powers under this Part.

The inspector must send the sworn application and the completed warrant form to the magistrate at the first reasonable opportunity and the magistrate must attach these documents to the warrant. A court must find a power exercised by an inspector was not authorised by a warrant if the warrant is not produced in evidence and it is not proved that the exercise of the power was authorised by a warrant under this section.

Clause 393 Subclause (1) sets out the inspector's responsibilities before entering premises under a search warrant. Subclause (1) need not be complied with if it is

believed immediate entry is required to ensure the safety of anyone or to ensure that the execution of the warrant is not frustrated.
Clause 394 specifies what an inspector must make available to an occupier or his/her representative if present during the execution of a search warrant.
Clause 395 An occupier or his/her representative is entitled to observe the search unless that person would impede the search or the person is under arrest and allowing the person to observe would interfere with the objectives of the search. clause 395 does not operate to prevent two or more areas of the premises being searched at the same time.

Part 12.6 Return and forfeiture of things seized

Clause 396 An inspector who seizes a thing under this part must give a receipt for it to the person from whom it is seized. A receipt secured conspicuously at the place of seizure may suffice in certain circumstances. Subclause (3) sets out the formal requirements for the receipt.
Clause 397 Things seized under a search warrant may be removed for examination or processing if there are reasonable grounds to believe the thing relates to the warrant and it is significantly more practicable to remove the item having regard to the timeliness and cost of examining or processing the thing and the availability of expert assistance, or the occupier of the premises agrees in writing. Seized items may be moved to another place for no longer than 72 hours. Application can be made to a magistrate for an extension of this time. The inspector must give notice of such an application to the occupier and the occupier is entitled to be heard on the application. The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension. If practicable, the inspector must tell the occupier where and when examination or processing will take place and allow the occupier or his/her representative to be present during the examination or processing.
Clause 398 A person who would be entitled to access to a thing seized may inspect it and, if it is a document, take extracts from it or make copies of it.
Clause 399 sets out the circumstances relating to the return of seized things. Things must be returned or reasonable compensation paid by the Territory to the owner for the loss of the thing, irrespective of whether an infringement notice is served or withdrawn, if there is no prosecution within 1 year after the day of seizure or if prosecution is commenced within the 1 year period and the offence is not found proved. Return of a thing or reasonable compensation must also be paid where liability for a thing is disputed under the *Magistrates Court Act 1930* and the Magistrates Court does not find the offence proved. Any thing which need not be returned, or compensated for, is forfeited to the Territory and may be sold, destroyed or otherwise disposed of at the direction of the chief planning executive.

Chapter 13 Review of decisions

Chapter 13 provides opportunities to seek merit review of decisions made under the proposed Act. The merit review is available through application to the AAT. The operation of the AAT is governed by the AAT Act. To understand who, when and how applications can be made to the AAT for merit review it is necessary to refer to both the proposed Act and also the AAT Act. Information about the AAT is available on the internet at www.courts.act.gov.au/magistrates/tribunals/aat/aat.html.

If an application is made to the AAT for review of a decision made under the proposed Act, the AAT has the same powers to assess the merits of the matter and make a decision as the original decision maker (i.e. the authority or the Minister). The term often used to describe this principle is that the AAT "stands in the shoes" of the original decision maker.

The key provisions for AAT review in the proposed Act are chapter 13 and schedule 1 at the back of the proposed Act. The decisions that are subject to AAT review and the people who can apply for review are listed in schedule1. However, it is important to keep in mind that the AAT Act also provides opportunities for people to appeal or to be joined in proceedings. Section 25 of the AAT Act permits people whose interests are affected by a decision to apply for review or be joined as a party to a proceeding. Section 28 of the AAT Act permits people whose interests are affected by a decision to apply to be joined as a party to the proceedings.

Chapter 13 provides that specified people can apply for AAT review of specified decisions. It also requires the authority to give notice of the original decision to all persons who are entitled to seek review and to all "interested persons". These requirements must be read in conjunction with schedule 1 at the back of the proposed Act. Schedule 1 works as follows.

- Columns 2 and 3 identify the decisions under the proposed Act that are subject to possible AAT review. Only decisions listed in column 2 which are made by a decision maker identified in column 3 are subject to AAT review;
- Column 4 lists the people who are entitled to seek review in the AAT of the decision identified in columns 2 and 3;
- Column 5 lists the people who are deemed to have an interest in the decision identified in columns 2 and 3 and who therefore must receive notice of the decision from the authority. If an appeal is made to the AAT, people identified in column 5 have a right to apply to the AAT to be joined as party to the proceedings (and the AAT must grant the application – refer to section 28 of the AAT Act).

The matters that are subject to AAT review include, for example, decisions to:

- refuse to grant development approval in the merit and impact tracks but not the code track (the applicant can seek review);
- grant development approval subject to conditions in the code, merit, impact track (the applicant can seek review);
- grant development approval (whether subject to conditions or not) in the merit track (if major public notification including newspaper notice is required) and impact track but not the code track (third parties who made a representation and who may suffer material detriment as a result of the decision can seek review - unless the development is exempt from third party appeal in the regulation);
- refuse to grant a lease by direct grant (the applicant can seek review);
- refuse to consent to a dealing in a lease (the lessee can seek review); and
- make a controlled activity order (compliance order) (person against whom order is directed, lessee and occupier can seek review).

Third parties may have a right to seek review of a decision to approve a development application in the merit or impact tracks (not the code track). This right depends on a number of factors. To make a third party appeal it is necessary to establish:

1. The development application is listed in schedule 1 as potentially attracting third party appeals. This includes impact track matters and merit matters that required major public notification under clauses 150 and 152 (i.e. notice in newspapers was required). And, the regulation does not exempt the relevant type of development from third party appeal;
2. The person made a representation on the development application during the public notification period or has a reasonable reason for not doing so;
3. The person could suffer material detriment if development approval were to be granted. Material detriment means the decision has, or is likely to have, an adverse impact on the person's use or enjoyment of the land and not because of increased competition with business interests.

Third party appeals can be exercised by individuals as well as organisations. The proposed Act permits organisations to make an appeal if the development application raises issues that are relevant to the objects or purposes of the organisation or if the entity itself could suffer direct material detriment.

If the decision maker makes a reviewable decision (see schedule 1) the decision maker must give written notice to eligible people and that notice must comply with the requirements of the code of practice under the AAT Act. Notice must also be given to interested persons as listed in schedule 1, column 5.

Review rights with respect to leasing decisions generally remain the same as the Land Act. Review rights on decisions about development approvals have changed from the Land Act.

Clause 400 sets out the definitions for chapter 13 including ***decision-maker***, ***eligible entity***, ***interested person*** and ***reviewable decision.***
Clause 401 provides the power for an eligible person to apply to the AAT for review of a reviewable decision. Where a decision maker has made a reviewable decision notice, complying with section 25B(1) of the AAT Act, must be given to each eligible person and each interested person for the decision. Schedule 1 of the proposed Act defines eligible entities, interested persons and reviewable decisions.
Clause 402 Application must be made within 4 weeks of a reviewable decision being made where a person who is not the applicant for the development application applies to the AAT for review of a decision. The period for application is not extendable under the AAT Act.
Clause 403 A legal proceeding to challenge the validity of a decision of the Minister made under clause 158 (Deciding development applications) must be begun not later than 28 days after the date of the decision. This time limit does not apply to an application to the AAT.

Chapter 14 Miscellaneous

This chapter lists the types of comments, applications, representations and proposals that the authority could exempt from being available for public inspection. This chapter also allows for the granting of rights to extract minerals from Territory land;

defines “material detriment” and provides for a range of ministerial powers and guidelines.

Clause 404 An applicant for development approval, the proponent of a development proposal who gives the authority a revised EIS under clause 214 or a person who has made comments and/or representations as set out in subclause (1) may apply to the authority for part of a relevant document, as defined in subclause (2), to be excluded from being available for public inspection. The authority may approve or refuse the application and must not approve the exclusion application unless satisfied that the part of the relevant document to which the exclusion application relates contains information the publication of which would disclose a trade secret or would or could reasonably be expected to endanger the life or physical safety of any person or lead to damage to, or theft of, property. If exclusion of part of a relevant document is approved, that part must not be made available to the public. If parts are excluded, a statement to that effect must be included on the copies of the relevant document made available for public inspection.

Clause 405 The authority must exclude from public availability any parts of a relevant document where a justice minister has certified that publication of those parts (the ***concerning part***) might jeopardise national security, expose the staff of a security organisation, or public, to risk of injury or property to risk of damage. Each copy of the relevant document made public must include a statement that an unmentioned part of the document has been excluded under this clause. Subclause (4) explains ***jeopardise national security*** and subclause (5) defines ***justice minister***, ***relevant document*** and ***security organisation.***

Clause 406 In the exercise of their function, an official (or a person assisting the official) must take all reasonable steps to cause as little inconvenience, detriment and damage as practicable. If an official, or any person assisting an official, causes any damage, the official must give written notice of the particulars of the damage to the owner, or person reasonably believed by the official to be the owner, of the thing. The notice may be conspicuously secured at the premises entered under chapter 12 if the damage occurs to premises in the absence of the occupier of the premises. Subclause (1) defines ***official*** and ***function***.

Clause 407 A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise of a function under this part by an official or a person assisting an official. Subclauses (2) - (3) set out when compensation may be claimed and ordered. Regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make an order of compensation. Examples of what may be prescribed are listed under Subclause (4). Clause 406 defines ***official*** and ***function***.

Clause 408 The authority may certify in writing that a lease mentioned in the certificate has ended. Such a certificate is evidence of the matter it states.

Clause 409 The authority may, by a lease or licence, grant a person the right to extract minerals from stated territory land. The provisions of such a lease or licence will be those agreed between the parties.

Clause 410 Subclause (1) sets out the definitions for this clause. A person to whom this section applies commits an offence if the person makes a record of protected information about someone else; and is reckless about whether the information is protected information; or the person does something that divulges protected information about someone else; and is reckless about whether the information is protected information; and doing the thing would result in the information being

divulged to someone else. The maximum penalty is a fine of 50 penalty units, imprisonment for 6 months or both. Subclause (2) does not apply if the record is made, or the information is divulged under the proposed Act or another territory law; or in relation to the exercise of a function, as a person to whom this clause applies, under the proposed Act or another territory law; or in a court proceeding. Subclause (2) does not apply to the divulging of protected information about someone with the person's consent.

Clause 411 sets out the meaning of ***material detriment***. It means the decision has, or is likely to have, an adverse impact on an entity's use or enjoyment of the land and not because of increased competition with business interests. Alternatively, for an entity that has objects or purposes, it may mean the decision relates to the objects or purposes of a corporation. The note explains that material detriment is used in schedule 1.

Clause 412 specifies that the Minister may approve guidelines for the exercise of any power by the Minister under the proposed Act. The Minister may, but need not, consider advice from the authority before approving guidelines. Guidelines are a notifiable instrument.

Clause 413 applies to the notifiable instruments set out in subclause (1). If the notifiable instrument made under certain clauses of the proposed Act does not state when the instrument expires, the instrument expires 6 month after the day it is notified.

Clause 414 The Minister may declare a website to be the planning and land authority website. The declaration is a notifiable instrument.

Clause 415 provides the standard power for the Minister to determine fees for the proposed Act. A determination is a disallowable instrument.

Clause 416 provides that the authority may, in writing, make approved forms for the proposed Act. If a form is approved for a particular purpose the form must be used for that purpose. An approved form is a notifiable instrument.

Clause 417 provides that the Executive may make regulations for the proposed Act. A regulation may make provision in relation to the matters set out in subclause (2). The regulations may prescribe penalties not exceeding 10 penalty units for offences against the regulations.

Chapter 15 – Transitional

In this chapter "existing lease" means a lease granted prior to commencement of the proposed Act. This chapter outlines the legislation that will be repealed and arrangements that will apply after the commencement of the proposed Act. Importantly, the existing use of land will not be affected by commencement of the proposed Act. There is no requirement to obtain approval to continue use permitted by an existing lease after commencement of the proposed Act. There is no requirement to obtain approval to start a new use permitted on an existing lease (providing the new use does not involve building (or earthworks etc.) that of itself requires approval). A use permitted on an existing lease will always be available for commencement even if the territory plan purports to prohibit such use. If the territory plan does prohibit such use, then application can still be made for approval of such use (if required) in the impact track.

Leases granted or continued under repealed Acts and in force prior to the proposed Act will be deemed to have been granted under the proposed Act, that is, the provisions of those leases will carry through unchanged.

This chapter is a law to which the Legislation Act section 88 (Repeal does not end effect of transitional laws etc.) applies (see clause 421).

Part 15.1 Transitional - general

Clause 418 defines ***commencement day*** and ***repealed Act*** for this chapter.
Clause 419 repeals the following legislation:
(1) (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.
Clause 420 A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Planning and Development (Consequential Amendments) Act 2007* or the proposed Act. Subclause (2) provides that a regulation may modify this chapter to make provision in relation to anything that in the Executive's opinion is not, or is not adequately or appropriately, dealt with in this chapter. A regulation under subclause (2) has effect despite anything elsewhere in the proposed Act.
Clause 421 This chapter is a law to which the Legislation Act section 88 (Repeal does not end effect of transitional laws etc.) applies.
Clause 422 This chapter expires 2 years after commencement day.

Part 15.2 Transitional – territory plan

Clause 423 The authority must, in consultation with the national capital authority and the public, prepare the territory plan. The notes explain that clause 424 sets out what is required for community consultation, clause 425 sets out the requirement to report on consultation with the national capital authority and states the territory plan to be a notifiable instrument. The Legislative Assembly may, by motion, approve the territory plan as notified under the Legislation Act. The approved territory plan commences on the commencement day, if it is approved on or before the commencement day, or the day after it is approved, if it is approved after the commencement day. ***Consultation*** includes consultation occurring before commencement of this clause and ***commencement day*** means the day clause 45 (Territory plan) commences.
Clause 424 sets out what is required for community consultation for clause 423.
Clause 425 The authority must give a written report to the Executive about the authority's consultation with the national capital authority under clause 423. Under subclause (2) the report must include the views expressed by the national capital authority.

Clause 426 This clause applies to draft plan variations begun but not notified under the repealed Act. Where the criteria in subclause (1) have been complied with before commencement day the authority will be taken to have complied with clause 60 (Consultation etc about draft plan variations being prepared) and the draft plan variation taken to be a draft plan variation under the proposed Act.
Clause 427 This clause applies to draft plan variations publicly notified under the repealed Act. Where the criteria in subclause (1) have been complied with prior to commencement day, the draft plan variation is taken to be a draft plan variation under the proposed Act. The authority will be taken to have complied with clause 60 (Consultation etc about draft plan variations being prepared), the draft plan variation taken to have been publicly notified and the consultation notice taken to be a consultation notice under the proposed Act.
Clause 428 This clause applies to draft plan variations prepared, publicly notified and then revised under the repealed Act. Where the criteria in subclause (1) have been complied with prior to commencement day, the revised draft plan variation is taken to be a draft plan variation revised under the proposed Act. The authority will be taken to have complied with clause 60 (Consultation etc about draft plan variations being prepared), the draft plan variation taken to have been publicly notified and the consultation notice taken to be a consultation notice under the proposed Act.

Part 15.3 Development and development applications

Clause 429 The definition of development in clause 7 applies in relation to a lease whether granted before or after the commencement of the proposed Act.
Clause 430 The repealed Act continues to apply where an application for approval was made under section 226 of the repealed Act and the authority had not decided the application immediately before commencement day. If the application is approved, approval is taken to be an approval under the proposed Act.
Clause 431 Despite clause 133 (Development proposals for prohibited development), a person may apply to the authority for development approval to begin a use of land, or a building or structure on the land, which on or after the commencement day of the proposed Act is a prohibited development if the use was authorised immediately before commencement day by the repealed Act or by a lease granted or varied under the repealed Act. If the application is made, the proposal is taken not to be prohibited development and the impact track applies. The right to make an application is not affected only because one or more of the following apply:
(i) The use is not continuous
(ii) Someone deals with the lease (the ***affected lease***) that authorises the use
(iii) a further lease is granted on application under clause 246 (Grant of further leases).
If the use was authorised by a lease the right to make an application ends if the lease expires and no application is made under clause 246 for a further lease or the lease is surrendered (other than under clause 246) or terminated. The note explains that a person may apply for the grant of a further lease not later than 6 months after expiry of the affected lease.

Clause 432 If, immediately before commencement day, an approval was in force under the repealed Act part 6 (Approvals and orders) the approval continues in force until the time when it would have ended under the repealed Act. The approval may be extended once if application for extension is made before the approval expires and no later than 6 months after commencement day.
Clause 433 If, immediately before commencement day, an approval was in force under the repealed Act part 6 (Approvals and orders) and an extension of the approval had been granted but not commenced, the approval continues in force under the repealed Act. The approval ends at the end of the extension period granted before commencement day.
Clause 434 defines ***development approval*** for the purposes of clause 193.

Part 15.4 Transitional – existing rights to use land, buildings and structures

Clause 435 If immediately before the commencement day of the proposed Act, a person's right to use land, or a building or structure on the land, in a way was authorised under the repealed Act or under a lease, licence or permit, the use of the land, building or structure, in the way authorised is lawful, despite any other provision of the proposed Act. Similarly, the authorised use is lawful if a person had a right authorised by a lease (the old lease) to use land, or a building or structure on the land, before commencement day of the proposed Act and the old lease expired and the person applies for the grant of a further lease and clause 246 (Grant of further lease) applies because of clause 442 (Extended application of s246). However, this clause is subject to clause 436 and 437.
Clause 436 If a use of land, or a building or structure on the land, is lawful because of clause 435 a person need not apply for development approval to continue or begin to use the land, building or structure in the way authorised or to change the use of the land, building or structure to the use authorised. The right to use the land, building or structure in the authorised way does not end only because one or more of the following apply in relation to the use:
(i) The use is not continuous
(ii) Someone deals with the lease (the ***affected lease***) that authorises the use
(iii) a further lease is granted on application under clause 246.
However, the right to use the land, building or structure in the authorised way stops being lawful if:

(a) if a lease authorises the use - the affected lease expires and no application is made for a further lease; or the affected lease is surrendered (other than under clause 246) or terminated; or
(b) if a permit or licence authorises the use – the licence or permit ends whether on expiry or otherwise, and even if renewed.

Subclause (3) defines ***authorised*** and ***deal*** with a lease.
Clause 437 The use of land, or building or structure on the land, in the way authorised is not lawful under clause 435 if, after commencement day, the building or structure on the land is constructed, altered or demolished; or earthworks or other construction work is carried out on the land and the construction, alteration, demolition or work carried out is associated with the use and is not exempt from requiring development approval. Subclause (2) sets out what ***authorised*** means for this clause.
Clause 438 Use of land comprised in a lease, or a building or structure on the land, is lawful under clause 240 (Use of land for leased purpose) if, immediately before

commencement day, the lease was in force and the use was either prescribed under the repealed Act section 175 (3)(a) and authorised by a development approval under the repealed Act or prescribed under the repealed Act section 175 (3)(b). The right to use the land comprised in the lease, or a building or structure on the land, is not affected only because 1 or more of the following apply:

(i) The use is not continuous

(ii) Someone deals with the lease

(iii) a further lease is granted on application under clause 246.

However, the right to use the land, building or structure in the authorised way stops being lawful if:

(a) the lease expires and no application under clause 246 is made for a further lease; or

(b) the lease is surrendered (other than under clause 246) or terminated.

Part 15.5 Transitional – leases and licences

Clause 439 After commencement day of the proposed Act, a person may deal with a community lease granted under section 163 of the repealed Act with the consent of the authority under clause 257 (Restrictions on dealings with concessional leases). ***Deal*** with a lease is defined in clause 226 and includes assigning, transferring, subletting or parting with possession of the land comprised in the lease or any part of it.

Clause 440 Clause 244 (Restrictions on dealings with certain leases) also applies to a special lease granted under section 164 of the repealed Act. The authority must not consent to a person dealing with a special lease unless satisfied the proposed transferee or assignee, or person to whom it is proposed to give possession of the land, is a person who could have been granted the lease in accordance with section 164 of the repealed Act and can satisfactorily continue to operate the lease for a purpose authorised by the lease. For a special lease, the ***restricted period*** under clause 244(4) is 5 years after the lease was granted.

Clause 441 Clause 244 also applies to an old lease granted under the *Leases Act 1918.* The authority must not consent to a person dealing with an old lease unless satisfied the proposed transferee or assignee, or person to whom it is proposed to give possession of the land, is a person who could have been granted the lease in accordance with the *Leases Act 1918* (repealed) or under clause 231(1)(d) for the same or similar purpose as the old lease and the person can satisfactorily continue to operate the lease for a purpose authorised by the lease. The ***restricted period*** for an old lease under clause 244(4) is the term of the lease.

Clause 442 Clause 246 (Grant of further leases) also applies to a lessee who held a lease under the repealed Act if the old lease expired before commencement day; and the lessee applies for the grant of a further lease; and the lease expired not more than 6 months before the application; and if not a residential lease, all rent due is paid; and the criteria, if any, prescribed by regulation for clause 246 are satisfied.

Clause 443 Clause 268 (No variation of certain leases for 5 years) also applies to a lease granted under section 164 of the repealed Act (the authority must not consent to the variation of the lease earlier than 5 years after the day the lease is granted).

Clause 444 Clause 277 (dealings with rural leases) also applies to a rural lease granted under the repealed Act (section 161) after 15 December 1999 for less than market value and a lease granted under section 171A of the repealed Act after 15

December 1999 on payment of an amount worked out on the application of an amount condition mentioned in section 171A(3)(a) of the repealed Act.
Clause 445 Clause 242 (No right to use, flow and control of water) does not apply in relation to leases or further leases granted before 11 December 1998.
Clause 446 Subject to clause 447,a lease or licence granted or continued (or purported to have been granted or continued) under the repealed Act and in force immediately before commencement day is taken to have been granted under the proposed Act.
Clause 447 sets out the continued application of certain repealed Acts and provisions – the *Australian National University (Leases) Act 1967* (repealed); the *Canberra College of Advanced Education (Leases) Act 1977* (repealed); the *Church Lands Leases Act 1924* (repealed); the *City Area Leases Act 1936* (repealed); the *Leases (Special Purposes) Act 1925* (repealed). 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 or paid for by the Territory or the Commonwealth. Subclause (9) defines ***continuing lease***. Section 88 of the Legislation Act applies to subclauses (1) to (9). Clause 447 expires on commencement day.
Clause 448 An application may be decided under the repealed Act within 6 months of commencement day where a person applied for grant of a lease under the repealed Act section 161 (Granting of leases), section 163 (Leases to community organisations) or section 164 (Special leases) and the authority had not decided the application immediately prior to commencement day. Where the lease is granted, it will be taken to have been granted immediately before commencement day.
Clause 449 An application is taken to have been made under the proposed Act where a person applied, in compliance with the repealed Act, for the grant of a lease under the repealed Act section 161 (Granting of leases), section 163 (Lease to community organisations) or section 164 (Special leases), the authority had not decided the application immediately before commencement day and more than six months have passed since commencement day.
Clause 450 Where an application for a licence under the repealed Act is made, and the authority had not decided the application immediately before commencement day, the application may be decided under the repealed Act provided that no more than 6 months have passed since commencement day. If granted, the application is taken to have been granted immediately before commencement day.
Clause 451 Where an application for a licence under the repealed Act was made, the application complied with requirements in the repealed Act, the authority had not decided the application immediately before commencement day and more than six months have passed since commencement day, the application is taken to have been made under the proposed Act.

Part 15.6 Transitional – controlled activities

Clause 452 defines ***construction occupations licensee*** in clause 338 (4).
Clause 453 A reference in schedule 2 item 4 to a building or structure that was constructed without approval required by the proposed Act includes a reference to a building or structure constructed without approval required by the Land Act division 6.2 as in force at any time or the *Buildings (Design and Siting) Act 1964* as in force at any time.

Part 15.7 Transitional – administrative

Clause 454 A person who was, immediately before commencement day, the chief planning executive under the *Planning and Development Act 2002* (the Planning and Development Act) is taken to be the chief planning executive under the proposed Act.
Clause 455 Persons who were the chair, deputy chair, CEO or other member of the land agency board under the Planning and Development Act continue to be the chair, deputy chair, CEO or other member of the land agency board under the proposed Act. The note explains that the CEO is a member of the governing board because of the FMA, s 80(2).
Clause 456 A person appointed as an inspector under the repealed Act, section 263, who was an inspector immediately prior to commencement day is taken to be an inspector under the proposed Act, clause 380.

Schedule 1
This schedule lists the reviewable decisions for the purposes of chapter 13 in column 1, the decision maker for each of the reviewable decisions in column 2, the eligible people who can apply to the AAT for review of the decision in column 4 and the interested people who can apply to be joined to the review in column 5. Interested people in column 5 must receive notice of the appeal to the AAT from the authority.

Important items are:
Item 2 - There is no right to appeal from a refusal of a development application in the code track except that the applicant, or a person who made a representation under clause 153, may appeal if the approval is subject to conditions.
Item 4 - A decision to approve a development application in the merit track which required public notification under clause 150, whether or not it required notification under clause 151, is subject to third party appeal rights if the third party made a representation under clause 153 or had a reasonable excuse for not making a representation, and the approval may cause the third party material detriment.
Item 6 - A decision to approve a development application in the impact track (unless the application is exempted by regulation) is subject to third party appeal rights if the third party made a representation under clause 153 or had a reasonable excuse for not making a representation, and the approval may cause the third party material detriment.
Item 7 - Where a condition of a development approval is that a stage of development has to be approved by another government agency, the refusal of the agency to approve the stage of development is itself a decision that can be appealed by the approval holder.
Item 19 - A decision under clause 249 that a lease is, or is not, a concessional lease can be appealed by the lessee.
Item 39 - If an application by a member of the public for a controlled activity order is refused the applicant can appeal.
Items 40 and 41 - A decision to make a controlled activity order can be appealed by the person against whom the order has been directed, the lessee of land to which the order relates or the occupier of land to which the order relates.

Schedule 2
This schedule lists controlled activities. Column 3 of the schedule provides for penalties where a person is found guilty of conducting a controlled activity specified in this schedule. The penalty of 60 penalty units has been set. This is to reflect the seriousness of the offence and to act as a sufficient deterrent to the impugned behaviour.

Schedule 3
This schedule lists categories of public land and the management objectives for those categories.

Schedule 4 lists the development proposals in the impact track because of the need for an EIS. Part 4.1 sets out the definitions for schedule 4. Part 4.2 is the schedule that sets out the development proposals that are activities that require an EIS. Part 4.3 is the schedule that sets out the development approvals, which are areas or processes that require an EIS.

The Dictionary sets out the definitions for the legislation.