

2003

LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT)  
(COMPLIANCE) AMENDMENT BILL 2003

EXPLANATORY STATEMENT

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

# LAND (PLANNING AND ENVIRONMENT) (COMPLIANCE) AMENDMENT BILL 2003

## Outline

The *Land (Planning and Environment)(Compliance) Amendment Bill 2003* (the “Compliance Bill”) provides for the amendment to the *Land (Planning and Environment) Act 1991* (the “Land Act”) and subordinate laws for the purpose of improving planning and leasing compliance powers. It also provides for more streamlined resolution of minor building encroachment issues.

The objective of the amendments is to empower departmental officers to impose a range of immediate and simple sanctions on lessees who contravene their lease, and to improve the effectiveness of monitoring development activity. The amendments will assist in addressing the increasing number of compliance complaints received.

The Land Act does not currently provide an effective intermediate range of sanctions against developers or lessees who build in contravention of, or in the absence of, a development approval, or who conduct activities in breach of their lease. At times it has been necessary to invoke powers in related legislation. These amendments will bring those powers and associated sanctions within the Land Act.

In respect of resolving encroachment issues, the Bill provides for related amendments to the *Roads and Public Places Act 1937* and the *Roads Act 1902*. The Bill also makes a number of minor technical and corrective amendments.

The main amendments affected by this Bill are broadly categorised in the accompanying [Table 1](#) as follows:

### **1. Amendments to the Land Act to provide greater clarification written in contemporary language**

The Bill includes a number of amendments to the Orders process that provide an intermediate range of penalties, a clearer structure and better clarity to existing provisions.

### **2. Provide for the planning and land authority to make orders at its own initiative**

Currently the planning and land authority [or delegate] can only apply for an Order as a *person*, and not in its own right. The Bill explicitly provides for this power.

### **3. Provide for the resolution of minor encroachment issues by streamlined approval processes**

Currently, development applications for minor lease boundary variations to eliminate building encroachments need to be notified. Appeal rights also apply. If the proposed lease boundary variation is also over an existing public road, the proposal to close the road must be notified under the *Public Roads Act 1902*. In the case of such a boundary variation to eliminate an encroachment, the Bill removes the requirement for the notification processes.

In cases where it is not appropriate to vary the lease boundary to eliminate an encroachment (eg for an awning over a shopfront public footpath), the Bill removes the requirement for the lessee to have both a permit under the *Roads and Public Places Act 1937* and a licence under the *Land (Planning and Environment) Act 1991*. Either a permit or a licence for the unleased land would be sufficient.

### **4. Deferral of rectification work cost**

In cases where the land authority undertakes rectification work on a lease, it is entitled to recover the cost from the occupier or lessee of the land. The Bill provides for the lessee to apply to the authority to have the repayment of the cost deferred. If agreed, the repayment is secured by registering a charge against the lease. Interest is payable on the deferred repayment. The criteria for determining circumstances for deferred payment will be a disallowable instrument yet to be drafted and when available will be tabled in the Assembly.

### **5. Provide for the planning and land authority to issue *prohibition notices***

The Bill provides for the planning authority to issue a prohibition notice in order to prevent or lessen irreversible damage being caused by, for example, unapproved development activities. The notice would have immediate effect.

## **Financial Implications**

There are not material financial implications resulting from the Bill.

## **PART and CLAUSE NOTES**

### **PART 1 – Preliminary**

**Clauses 1 and 2 – Names of Act and commencement** – are machinery provisions that specify the name of the Act and provide for the commencement of its provisions.

### **PART 2 – Land (Planning and Environment) Act 1991**

**Clause 3 – Acts amended** – notes that this part and schedule 2 amend the *Land (Planning and Environment) Act 1991*.

**Clause 4 – Licences Section 210 (1)** – provides an example of when a licence might be given.

**Clause 5 – New Section 210 (4)** – eliminates unnecessary duplication with the permit provisions of the *Roads and Public Places Act 1937*.

**Clause 6 – Licences in respect of land that is not public land Section 217(1), new example and note** – provides an example of when a licence might be given.

**Clause 7 – New section 217(5)** – eliminates unnecessary duplication with the permit provisions of the *Roads and Public Places Act 1937*.

### **Clause 8 – Division 6.3**

Table 1 – Amendments to the Orders provisions of the Land (Planning and Environment) Act 1991

**TABLE 1 - AMENDMENTS TO THE  
LAND (PLANNING AND ENVIRONMENT) ACT 1991**

Proposed Section No.	Existing Section No.		Notes
254	256(1)-(4)		The application for order process is written in contemporary language
254A	256(4A)-(4BA), (6)		The decision process on applications for orders is written in contemporary language
255 & 255A	new		The authority is explicitly provided with powers to make orders on its own initiative
256	256(4D)		The Executive order process is given its own section
257	256(5)		The requirements for the content of orders is written in contemporary language
257A	256(4C) & 257		Equivalent provisions
257B	260		Equivalent provisions
258	255		Equivalent provisions with a strict liability offence <sup>1</sup>
258A,B & C	new		How an order may end is explicitly indicated
259	new		Definitions in respect of rectification work are provided
259A	new		Provision is made for directions to be given to a lessee or occupier to carry out rectification work
259B	259(1)(a), (3)		Equivalent provisions written in contemporary language to give effect to the new provision of rectification notices
259C	259(2)		Creates a strict liability offence <sup>1</sup> for obstructing an authorised person from carrying out work required by a rectification notice.
259D	new		Provision is made for recovery of costs for rectification work carried out by an authorised person
259E	new		Provision is made for a lessee to defer repayment of rectification work cost (whole or part) in accordance with criteria to be determined in a disallowable instrument
259F	new		Provision is made for a lessee to apply for deferral of part or all of costs of rectification work
259G	new		Provision to declare deferral of costs
259H	new		Provision of a process for registering deferred costs against a title
259I	new		Provision of a process for revoking and de-registering a deferral declaration once the cost has been fully paid
260	new		Provision is made for the authority to give a prohibition notice to prevent or lessen a threat or likelihood of irreversible damage by the continued conduct of a controlled activity, as already defined in the existing Act as an activity subject to order at schedule 5. Such a notice will have immediate effect

Proposed Section No.	Existing Section No.		Notes
260A	new		Contravening a prohibition notice is a strict liability offence <sup>1</sup> . Financial penalties (fines) will be further prescribed in Regulations yet to be drafted in association with the Bill
260B	new		Provision is made to end the effect of a prohibition notice. The notice has a maximum period of effect of 60 days
260C	259(1)(b) & 261		Provision is made for injunctions against contravention of orders and prohibition notices to be issued by the Supreme Court
261	254		Equivalent provision

Footnote:-

1. The kinds of arguments that might be used to justify strict liability being applied include:

- the fact that the offence is minor ;
- the fact that the offence does not involve dishonesty or other serious imputation affecting the offender's reputation;
- the fact that the offence is directed at protecting the health and safety of the public, or at protecting the environment;
- the difficulty the prosecution would have in proving fault (especially intention or knowledge) in the particular case.

**Clause 9 – Conversion of Commonwealth leases – Section 291(3)** – adds the *National Lands Ordinance 1989* to the list of prescribed laws, and provides the relevant period of effect. This Act was inadvertently omitted during previous drafting of this provision.

### **PART 3 – Public Roads Act 1902**

#### **Clauses 10 to 13**

These clauses provide that, if a road is proposed to be partly closed in order to give effect to a *minor development*, there is no longer a requirement to notify the intention to partly close the road. The intention of these clauses is to assist in streamlining processing of proposals to eliminate building encroachments.

### **PART 3 – Public Roads Act 1902**

#### **Clauses 14 to 16**

These clauses eliminate unnecessary duplication with licence provisions of the *Land (Planning and Environment) Act 1991*. This will assist in streamlining the licensing of encroaching structures, such as awnings etc.

**Clause 17 – Consequential and other amendments – sch 1** – provides for other amendments listed in Schedule 1.

### **SCHEDULE 1 – Other amendments**

**Part 1.1 – Heritage Objects Act 1991 – [1.1] and [1.2]** - provides for cross-referencing to the proposed new Land Act Orders provisions.

#### **Part 1.2 – Land (Planning and Environment) Act 1991 –**

**[1.3]** – provides for a cross-reference to the proposed new Land Act Orders provisions.

**[1.4]** – provides for a cross-reference to the proposed new Land Act Orders provisions.

**[1.5]** – provides for a new definition.

**[1.6]** – provides for a new definition.

**[1.7]** – provides for Supreme Court powers to grant injunctions.

**[1.8]** – provides for requirement to issue identity cards to inspectors, and for inspectors to show them before exercising any powers.

**[1.9]** – omits Sections 268 and 270.

**[1.10]** – provides for substituted section, Review of decisions - orders and prohibition notices.

**[1.11]** – provides for a new heading to Schedule 5.

**[1.12]** – provides for a new definition.

**[1.13]** – provides for a new definition.

**[1.14]** – provides for a new definition.

**[1.15]** – provides for a new definitions.

**Part 1.3– Land (Planning and Environment) Regulations 1992 –**

[1.16] – provides for a new heading to Schedule 5.

[1.17] – provides for a new definition.

[1.18] – provides for a new definition.

[1.19] – provides for a new definition.

[1.20] – provides for a new definitions.

**Part 1.4 – Land Titles Act 1925 -**

[1.21] – provides for a new definitions.

**Part 1.5 – Nature Conservation Act 1980 -**

[1.22] – provides for a new definitions.

**SCHEDULE 2 – Technical amendments of Land (Planning and Environment) Act 1991**

Explanatory notes for this Schedule are provided within the Bill.