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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT
(UNIVERSITY OF CANBERRA AND OTHER LEASES)
LEGISLATION AMENDMENT BILL 2015**

EXPLANATORY STATEMENT

**Presented by
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Introduction

This explanatory statement relates to the *Planning and Development (University of Canberra and Other Leases) Legislation Amendment Bill 2015* (the bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

Background

This explanatory statement provides information about why a bill is required together with an explanation about the proposed legislative amendments.

The University of Canberra (the University) opened in 1968 as the Canberra College of Advanced Education, the first centre for adult education (CAE) in Australia. In 1990 the University was re-created as a university as a part of national educational reforms. Today the University is one of the major tertiary education establishments within the Australian Capital Territory (ACT) and Australia.

As a highly competitive market, elite universities around Australia and the world provide a range of high quality services and facilities to attract the best students and staff. These facilities include not only educational or residential accommodation but also strong links with industry and convenient commercial services. Recognising the shift in the types of services and facilities contemporary universities are providing staff, students and the wider community, the University has prepared a campus master plan which sets out their future vision for the campus. The Urban Plan, which is informed by the UC Campus Master Plan sets out more detailed, shorter term goals which are to be achieved.

For the University to continue its growth and remain competitive as an elite education provider, the planning controls which govern development on the campus will need to be broadened. This broadening of planning controls will allow the University the same commercial opportunities as other universities, such as the Australian National University.

The University is a unique case in terms of land use planning as it is one of the few lessees in the ACT to have its own Act: the *University of Canberra Act 1989* (the UC Act). The UC Act sets out the powers and functions of the university. Due to University's importance to Canberra the UC Act requires involvement of the ACT Government with respect to certain functions, such as appointment to the University Council. As such the ACT Government has a relatively large degree of control over the University when compared to almost all other development within the ACT.

The University Council and other internal decision making bodies within the University further restrict and regulate development undertaken on campus. The Planning and Development Act 2007 continues to apply to the University with the University required to seek development approval for development proposals contemplated by the Campus Master Plan.

The bill is one part of a suite of changes being made to legislation which also includes a draft variation to the Territory Plan. The Campus Master Plan needs two things to happen to allow the vision to be fulfilled: a capacity to unit title a building on part of the parcel of land held under the perpetual lease and strengthened provisions for a sublease to satisfy lending

institutions requirements for a mortgage. The new leasing model will allow the University to fulfil the Campus Master Plan meaning it is necessary to consider amendments to planning and other legislation.

The University and other lessees can already sublease part of the land held under a lease. This requires the agreement of the planning and land authority and to date these provisions have been rarely used. However, because of the development anticipated by the Campus Master Plan a sublease of land will become more common. The *Planning and Development Act 2007* (the P&D Act) manages leases, and subleases of land in the Australian Capital Territory. The P&D Act provides for the management of Crown leases and in some circumstances provides for how the lease can be dealt with. For example, some leases cannot be transferred within the first five years from the grant of the lease.

The *Land Titles Act 1925* (the LT Act) manages the registration and recording of title for land brought under the LT Act. The LT Act already provides that a sublease, of a building or land, can be registered on the Land Titles Register. The LT Act provides for transfer and dealings with the title including mortgages and encumbrances. However, it is not mandatory to register a lease or sublease and typically it is a condition of the mortgagee, if any, to register the title.

The *Unit Titles Act 2001* (UT Act) manages the unit title application process and how a units plan is managed throughout its life. The UT Act provides that a parcel of land must be unit titled in whole and that any lease must have a minimum of 50 years remaining on the term of the lease. This last requirement is mandated to ensure that prospective unit owners have sufficient terms on their lease to seek a mortgage.

These three Acts form the foundation of the new leasing model i.e. the primary amendments. Secondary amendments are required to other legislation to ensure policy positions, e.g. duties and taxes are extended to capture declared land subleases. Lastly, there are consequential amendments. The purpose of consequential amendments is to amend legislation where provisions are impacted in some minor way because of the amendments delivering the main outcomes of the Bill i.e. the primary amendments. For instance, consequential amendments are required to ensure that references to the *parcel* or *block* also include a reference to a *block* that is a *sublease of land*. For an address, amendments are necessary to include the sublease plan number to allow others to know where the address is. Where appropriate, the definition of *parcel* of land has been amended in various Acts to include land under *declared land sublease*.

Consequential amendments ensure that the statute book interacts with the primary amendments, the Act and subordinate laws and operates as it should. Consequential amendments do not change the policy outcomes.

Human Rights

The Bill does not limit any human rights. On the contrary, the Bill creates a level of protections for a sublessee of land that have not been available to date.

Delegation of legislative power

The Bill does not delegate any legislative power to any other person or body.

Overview of the bill

The bill proposes a number of primary amendments that will form the foundation of the new leasing model and have at its core the *Land Titles Act 1925*, the *Planning and Development Act 2007* and the *Unit Titles Act 2001*. The following Acts are amended to give effect to the main objects of the bill:

- *Community Title Act 2001*
- *Land Titles Act 1925*
- *Land Titles (Unit titles) Act 1970*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Unit titles Act 2001*
- *Unit titles (Management) Act 2011*
- *Unit titles Regulation 2001*

Secondary amendments

The following Acts contain secondary amendments that ensure that subleases created under the new leasing model are capable of having utility services connected to the sublease boundary:

- *Utilities Act 2000*
- *Water and Sewerage Act 2000*
- *Water and Sewerage Regulation 2001*
- *Water Resources Act 2007*

The following Acts are being amended to extend the application of existing policy as appropriate to a sublease of land or a *declared land sublease*. The amendments do not have retrospective application and do not change the existing provisions as they apply to building leases or subleases.

- *Duties Act 1999*
- *First Home Owner Grant Act 2000*
- *Land Tax Act 2004*
- *Rates Act 2004*

Consequential Amendments

The Bill proposes consequential amendments to the following Acts:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Common Boundaries Act 1981*
- *Environment Protection Act 1997*
- *Environment Protection Regulation 2005*
- *Leases (Commercial and Retail) Act 2001*
- *Legislation Act 2001*
- *Public Unleased land Act 2013*

The new leasing model

Amendments to the *Land Titles Act 1925* form part of the primary amendments being made to introduce the new leasing model. The amendments made at part 11 of the Bill are

related to amendments at part 15 *Planning and Development Act 2007*, cause 94 and part 19 *Unit Titles Act 2001*.

In the ACT there are two primary pieces of legislation that manages the granting of a lease: the *Planning and Development Act 2007* for a land lease and the *Leases (Commercial and Retail) Act 2001* for a lease of *premises* (see section 7 of the Act for a definition of *premises*).

The Land Titles Act forms the basis for management of leases and creates a *register* under section 43 of the Act. Further, although the Planning and Development Act also has similar provisions the Act is purely about interactions between the Territory and a lessee for land. The new leasing model creates new relationships between the Crown lessee of the land and a person seeking a sublease of the land. The amendments **create new protections** for a *sublessee* of land.

The new leasing model amends existing provisions for subleasing land that has not been widely used in the past, with a strengthened set of provisions. Importantly, amendments offer the same protections to a *sublessee* of land as those provided under the Planning and Development Act and the Leases (Commercial and Retail) Act. The Land Titles Act is the logical place to contain these provisions as those matters identified (transfer, surrender, ending of a sublease) sits well with existing provisions. The amendments to the subleasing of land provisions apply to all subleases of land and are not restricted to a declared land sublease of land.

The Unit Titles Act is amended to provide that a parcel of land can be a parcel held under a declared land sublease. This simple amendment opens the UT Act to accept applications for a building on a declared land sublease. However, before a Crown lessee can access the UT Act amendments Government must declare the Crown lease against criteria specified in the Planning and Development Act. A *declared land sublease* is a new type of *land sublease* available to certain perpetual lessee's: the University of Canberra and the Australian National University (if prescribed by regulation).

Once an application is approved and the units plan is created the units operate in the same manner as a units plan created under a Crown lease. There are minor exceptions: the declared land sublessee must have the consent of the Crown lessee to make an application under the UT Act; an Owners Corporation must have the Crown lessees consent for a development application; and the Crown lessee is responsible for further leases for when the units plan would expire.

Outline of Provisions

Part 1 Preliminary

Clause 1 Name of Act

The clause provides that the name of the Act is the *Planning and Development (University of Canberra and Other Leases) Legislation Amendment Bill 2015*.

Clause 2 Commencement

The clause provides that the Act will commence on a day fixed by the Minister by written notice.

The *Legislation Act 2001* provides that an Act can be commenced by written notification. This allows the Minister responsible for the Act to commence the Act on a specific day. Section 77 of the *Legislation Act* provides that different parts of the Act can be commenced on different days.

Section 79 of the *Legislation Act* provides that the Act will automatically commence 6 months after the notification day. This flexibility ensures that necessary provisions in the Act can commence in a structured way.

Clause 3 Legislation amended

Clause 3 lists the legislation that is amended by the Act:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Common Boundaries Act 1981*
- *Community Title Act 2001*
- *Duties Act 1999*
- *Environment Protection Act 1997*
- *Environment Protection Regulation 2005*
- *First Home Owner Grant Act 2000*
- *Land Titles Act 1925*
- *Land Titles (Unit titles) Act 1970*
- *Land Tax Act 2004*
- *Leases (Commercial and Retail) Act 2001*
- *Legislation Act 2001*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Public Unleased land Act 2013*
- *Rates Act 2004*
- *Unit titles Act 2001*
- *Unit titles (Management) Act 2011*
- *Unit titles Regulation 2001*
- *Utilities Act 2000*
- *Water and Sewerage Act 2000*
- *Water and Sewerage Regulation 2001*
- *Water Resources Act 2007*

Part 2 Building Act 2004

General: Clause 4, 5 and 6 insert new definitions into the Dictionary for *land sublease*, *owner* and *parcel*. The Building Act currently deals with the *owner* of a *parcel* of land which is typically held under a Crown lease. The object of the amendments is to ensure that an *owner* of part of a *parcel* of land held under a *land sublease* can do all things necessary to apply for a building approval under the Act.

Clause 4 Dictionary, new definition of *land sublease*

The clause inserts a new definition for *land sublease*. A *land sublease* means a sublease of land approved under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land) but **does not include** a building sublease. This is a consequential amendment.

The purpose of the amendment is to ensure that the Building Act recognises a *parcel* of land held under a *land sublease*.

The amendment is related to amendments made by clause 97 to the *Planning and Development Act 2007* to insert a new item in the Dictionary for *land sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert a definition in the *Common Boundaries Act 1981*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Clause 5 Dictionary, definition of *owner*, new paragraph (h)

The clause inserts a new definition for *owner*. If the land is under a sublease the *owner* is the *sublessee*. This is a consequential amendment.

The purpose of the amendment is to ensure that the Building Act recognises a *sublessee* as an *owner* of land. The Building Act provides that the *owner* of land can make an application under the Act. The amendment expands this definition to also include an *owner* of a part of a *parcel* held under a *land sublease*.

The definition of *owner* is consistent with the proposed amendments to insert a definition in the *Environment Protection Regulation 2005*, *Land Tax Act 2004*, *Planning and Development Regulation 2008*, *Public Unleased Land Act 2013*, *Rates Act 2004*, *Utilities Act 2000*, *Water and Sewerage Act 2000* and *Water Resources Act 2007*.

Clause 97 inserts, in the *Planning and Development Act 2007*, a new item in the Dictionary for *land sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert a definition in the *Common Boundaries Act 1981*, *Community Title Act 2001*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Clause 6 Dictionary, new definition of *parcel*

The clause inserts a new definition for *parcel*. A *parcel* is a *parcel* of land and includes land under a *land sublease*. This is a consequential amendment.

The purpose of the amendment is to ensure that the application of the Building Act extends to a *parcel* of land that can be held under a sublease. Normally a *parcel* of land refers to the whole *parcel*. However, the amendment expands this definition to also include that a *parcel* can be *part of a parcel* held under a *land sublease*.

Clause 97 inserts, in the *Planning and Development Act 2007*, a new item in the Dictionary for *land sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert a definition in the *Common Boundaries Act 1981*, *Community Title Act 2001*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Part 3 Building (General) Regulation 2008

Clause 7 General requirements for plans – Act, s 27 (1) (a) Section 16 (2) (g)

The clause substitutes existing section 16 (2) (g). New section 16 (2) (g) requires for the *parcel* of land where the work is to be done to include a site plan on a scale of not less than 1:200 showing the block and section number of the land and for land under a *land sublease*, the sublease plan, and the boundaries and dimensions of the land. This is a consequential amendment.

The purpose of the amendment is to ensure that general requirements for plans is expanded to include plan requirements for a building application made for a part of a *parcel* of land held under a *land sublease*.

Clause 8 Dictionary, Note 3

The clause inserts at Note 3 - *land sublease* and *parcel (of land)*. A *land sublease* means a sublease of land approved under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land) but **does not include** a building sublease. A *parcel of land* is a *parcel* of land held under a Crown lease or land under a *land sublease*. This is a consequential amendment.

The amendment is related to amendments made at clause 97 that amends the *Planning and Development Act 2007* to insert a new definition in the Dictionary for *land sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert a definition in the *Common Boundaries Act 1981*, *Community Title Act 2001*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Part 4 Common Boundaries Act 1981

Clause 9 When land is a *parcel of land* New section 2A (aa)

The clause inserts a new section 2A (aa). A *parcel of land* is land held by a person under a *land sublease*. This is a consequential amendment.

The purpose of the amendment is to ensure that the application of the Act extends to land held under a *land sublease*.

The amendment is related to amendments made at clause 97 that amends the *Planning and Development Act 2007* to insert a new definition in the Dictionary for *land sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert a definition in the *Common Boundaries Act 1981*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Clause 10 Dictionary, new definition of *land sublease*

The clause inserts a new definition of *land sublease*. A *land sublease* means a sublease of land approved under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land) but **does not include** a building sublease. This is a consequential amendment.

The amendment is related to amendments made at clause 97 that amends the *Planning and Development Act 2007* to insert a new definition in the Dictionary for *land sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert a definition in the *Building Act 2004*, *Environment Protection Act 1997*, *First Home Owner Grant Act 2000*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Clause 11 Dictionary, definition of *parcel of land*

The clause substitutes the existing definition of a *parcel of land*, for division 2.1 (Fences requested by occupiers) see section 2A and section 2B, and generally includes land held under a *land sublease*. This is a consequential amendment.

The purpose of the amendment is to ensure that the application of the Act extends to land held under a *land sublease*.

The amendment is related to amendments made at clause 97 that amends the *Planning and Development Act 2007* to insert a new definition in the Dictionary for *land sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert a definition in the *Building Act 2004*, *Environment Protection Act 1997*, *First Home Owner Grant Act 2000*, *Land Tax Act 2004*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Rates Act 2004*, *Utilities Act 2000* and *Water Resources Act 2007*.

Part 5 Community Title Act 2001

Clause 12 Community title scheme proposal – application for approval, new section 8 (2) (c)

The clause inserts a new subsection (2) (c). The amendment expands the existing provision to provide that if an applicant, for land held under a *declared land sublease*, is not the *sublessee* that the *sublessee* must sign the application.

The amendment provides that the lessee or the *sublessee* must sign any application for community title. The effect of the amendment is to allow land held under a *declared land sublease* to make an application for community title under the Act.

Clause 94 inserts a new part 9.13 in the *Planning and Development Act 2007*. New section 312B Declared Crown leases provides that the Crown lessee can seek a declaration from Government. The new section provides that a declaration can only be made if it is in the public interest. Public interest is defined at subsection (2). A declaration must be made by two Ministers and is a notifiable instrument. New section 312C (1) provides a new definition of *declared land sublease*.

Clause 13 Amendment by the Supreme Court, Section 27 (1), definition of *interested person*, new paragraph (ca)

The clause inserts a new paragraph (ca) to expand the definition of *interested person*. The amendment provides that for a *parcel* of land under a *declared land sublease* the *interested person* includes the Crown lessee.

The amendment is related to amendments at clause 133 that substitutes the existing definition of interest in the *Unit Titles Act 2001*. Clause 133 substitutes the existing definition for “interest’ with a new definition of *interest* which includes interest in a unit or common property, created under a *declared land sublease*.

Clause 14 Injunction, Section 28 (2), definition of *interested person*, new paragraph (ba)

The clause inserts a new paragraph (ba) to define *interested person*. For a *parcel* of land under a *declared land sublease* the *interested person* is the Crown lessee.

The purpose of the amendment is to ensure that an *interested person* under a *declared land sublease* can apply for an injunction requiring the developer of a community title scheme to finish the scheme in accordance with the terms of the scheme.

The amendment is related to amendments at clause 133 that substitutes the existing definition of interest in the *Unit Titles Act 2001*. Clause 133 substitutes the existing definition for “interest’ with a new definition of *interest* which includes interest in a unit or common property, created under a *declared land sublease*.

Clause 15 Dictionary, new definitions

The clause inserts new definitions of *Crown lease*, *Crown lessee* and *declared land sublease*. The purpose of the amendment is to ensure that the application of the Act extends to land held under a *declared land sublease*.

A *Crown lease* means a territory lease and includes a lease granted by the Commonwealth or the Federal Capital Commission. Clause 74 amends the definition of *territory lease* in the *Legislation Act 2001* to exclude a sublease of land approved under section 308 of the *Planning and Development Act 2007* or any other sublease.

A *Crown lessee*, in relation to a *declared land sublease*, means the lessee under the Crown lease under which the sublease is granted.

A *declared land sublease* means a sublease of land granted under a Crown lease that has been *declared* under the *Planning and Development Act 2007*, section 312B (see cause 94).

Clause 16 Dictionary, definition of *lot*

The clause substitutes the current definition of *lot* with a new definition. The new definition provides that *lot* means a *parcel* of land for which a certificate of title has been issued under the *Land Titles Act 1925* but **does not include** a *land sublease* other than a *declared land sublease*.

A *declared land sublease* means a sublease of land granted under a Crown lease that has been *declared* under the *Planning and Development Act 2007*, section 312B (see cause 94).

Part 6 Duties Act 1999

General: A *declared land sublease* is a new type of *land sublease* available to certain perpetual lessee's: the University of Canberra and the Australian National University (if prescribed by regulation).

The capacity to sublease land is already provided for under the *Planning and Development Act 2007*, section 308 (power of Crown lessee to sublet part of land) and does not attract duty. However, a building on land under a normal sublease of land cannot be unit titled whereas it can be under a *declared land sublease*. For this reason it is appropriate that a *sublessee* of a *declared land sublease* should pay stamp duty the same as other Crown lessee's do.

Clause 92 and 94 provide a strengthened framework for subleasing of land and allowing certain perpetual Crown leases to be *declared*.

The following amendments put in-place the necessary changes to ensure that a *declared land sublease* is dutiable property for the purposes of the Act. The amendments achieve this by providing that a *declared land sublease* is the same as a Crown lease.

Clause 17 Imposition of duty on certain transactions concerning dutiable property New section 7 (1) (iiia)

The clause inserts a new section 7 (1) (b) (iiia). New section 7 (1) (b) (iiia) provides that the imposition of duty includes charging duty on a grant of a *declared land sublease* as if it was a grant of a Crown lease.

Clause 94 inserts in the *Planning and Development Act 2007*, new section 312C. New section 312C provides that a *land sublease* created under a *declared Crown lease* is a *declared land sublease*. Subsection (1) provides a definition for the Act for *declared land*

sublease. The clause also inserts new section 312B. New section 312B provides the process for a prescribed Crown lessee to seek a declaration. A *prescribed Crown lease* means a perpetual Crown lease held by the University of Canberra or a perpetual Crown lease held by the Australian National University prescribed by regulation.

The amendment extends the existing policy of duty for dutiable transactions to a *declared land sublease*. In this way a *declared land sublease* is no different to a lease or a Crown lease.

The amendment is related to the amendment made at clause 21 that inserts a new paragraph at section 10 to include land held under a *declared land sublease* as *dutiable property*.

Clause 18 Section 7 (3), definition of *grant*

The clause substitutes the definition of *grant* to include the *grant* of a new lease following the surrender or determination of the Crown lease and includes the *grant* of a *declared land sublease* over land that includes part or all of the land where a lease or sublease exists.

Clause 19 Imposition of duty on dutiable transactions that are not transfers, Section 8, table 8, item 3, columns 2 and 5

The clause inserts the words “(or *declared land sublease*)” after the word “lease”.

The amendment extends the existing policy of duty for dutiable transactions to a *declared land sublease*. In this way a *declared land sublease* is no different to a lease or a Crown lease.

The amendment is related to the amendment made at clause 21 that inserts a new paragraph at section 10 to include land held under a *declared land sublease* as *dutiable property*.

Clause 20 Section 8, table 8, item 3, column 4

The clause inserts the words “(or *declared land sublease*, the *sublessee*)” after the word “lessee”.

The amendment extends the existing policy of duty for dutiable transactions to a *sublessee* for land held under a *declared land sublease*. In this way a *declared land sublessee* is no different to a lessee or a Crown lessee.

The amendment is related to the amendment made at clause 21 that inserts a new paragraph at section 10 to include land held under a *declared land sublease* as *dutiable property*.

Clause 21 Dutiable property, New section 10 (1) (ba)

The clause inserts a new subsection (ba) to include a *declared land sublease* as *dutiable property*. The purpose of the amendment is to ensure that land held under a *declared land sublease* is dutiable property: meaning the *sublessee* is responsible for rates and taxes the same as other land *owners* are.

The amendment is related to amendments at clause 17, clause 19, clause 20 and clause 22.

Clause 22 Section 10 (1) (g)

The clause inserts at subsection (g) that an option to purchase land in the ACT or a *Crown lease* also includes a *declared land sublease*.

The purpose of the amendment is to ensure that an option to purchase land in the ACT that is held under a *declared land sublease* is dutiable property.

The amendment is related to amendments at clause 17, clause 19, clause 20 and clause 21.

Clause 23 What is the consideration for the transfer of dutiable property? Section 21 (3)

The clause substitutes the existing subsection (3) with a new subsection (3). New subsection (3) provides that the value of works required to be carried out by the *sublessee* as part of the consideration for the sublease of land forms part of the consideration for the sublease of land i.e. the *declared land sublease*. That is consideration can be wholly monetary with no works required or a combination of money and works (or money, works or services).

The purpose of the amendment is to ensure that if a term of the sublease requires the *sublessee*, of the land held under a *declared land sublease*, must complete works on land not held under the sublease that the value of these works forms part of the consideration for the lease or *declared land sublease*.

Duty is calculated on the consideration paid for the lease or *declared land sublease*. The Act defines *consideration* as:

“Consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the **value** of a non-monetary consideration”

For example the monetary consideration may be \$45,000 and the value, not the cost, of off-site works is \$15,000 meaning the consideration paid for the lease or *declared land sublease* is \$60,000.

Clause 24 Refund if Crown lease surrendered, new section 52 (6)

The clause inserts a new section 52 (6) and applies to a *declared land sublease* as if it were a Crown lease. Any money paid to the *sublessee* under the terms of the sublease because of the surrender or termination of the sublease is the amount that would be required to be refunded under the *Planning and Development Act 2007*, section 300. The amount is calculated under section 291 of the Act. The effect of the amendment is that the planning and land authority is not required to pay the amount to the *sublessee* the sublessor i.e. the Crown lessee is. This is a consequential amendment.

In the context of the Duties Act the *sublessee*, of the *declared land sublease* would be entitled to any refund under the Act.

Clause 25 Surrender and regrant of Crown lease new section 68 (4)

The clause inserts a new subsection (4). New subsection (4) provides that the section applies to a *declared land sublease* as if the sublease were a Crown lease.

The effect of the amendment is that existing policy on duties is extended to land held under a *declared land sublease* as if it was land held under a Crown lease.

The amendment is related to amendments at clause 17, clause 19, clause 20 and clause 21.

Clause 26 Regrant of lease with additional land new section 68A (2)

The clause inserts a new subsection (2). New subsection (2) provides that the section applies to a *declared land sublease* as if the sublease were a Crown lease.

The effect of the amendment is that existing policy on duties is extended to land held under a *declared land sublease* as if it was land held under a Crown lease.

The amendment is related to amendments at clause 17, clause 19, clause 20 and clause 21.

Clause 27 Dictionary, new definition of *Crown lease* and note

The clause substitutes the existing definition of *Crown lease* with the definition provided in the dictionary of the *Land Titles Act 1925*.

The effect of the amendment is to provide consistency for the definition of Crown lease between the Duties Act and the Land Titles Act. The amendment does not change the substance of the definition. This is a consequential amendment.

Clause 28 Dictionary, new definition of *declared land sublease*

The clause inserts a new definition of *declared land sublease*. Clause 94 inserts in the *Planning and Development Act 2007*, new section 312C. New section 312C provides that a *land sublease* created under a *declared Crown lease* is a *declared land sublease*. The clause also inserts new section 312B that provides the process for a prescribed Crown lease to be *declared*.

Part 7 *Environment Protection Act 1997*

Clause 29 Duty to notify existence of contaminated land, Section 23A (1)

The clause omits the existing section and inserts a new section 23A (1).

The new section refers to *relevant person* a new term defined at new section 23A (3) (inserted by clause 31). The purpose of the amendment is to extend responsibility to a *sublessee* of land. Presently the section only applies to the *lessee* or *occupier* of the land.

The effect of the amendment is that the lessee or *sublessee* or occupier of the land has a responsibility to notify the existence of contaminated land. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 30 Section 23A (2)

The clause inserts the word *relevant* before the word *person*. The amendment reflects the amendment made at clause 31 that inserts a new term *relevant person* for the purposes of section 23A.

The effect of the amendment is that the lessee or *sublessee* or occupier of the land must not, without reasonable excuse, contravene sub-section (1) (as amended by clause 29). The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 31 New section 23A (3)

The clause inserts a new term “*relevant person*” for the section. Relevant person is defined as the occupier of the land or the lessee or the *sublessee*.

The effect of the amendment is that the lessee or *sublessee* or occupier of the land has a responsibility to notify the existence of contaminated land. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 32 Application, Section 47 (3)

The clause omits *parcel of land* and substitutes it with “*land (or for land held under a land sublease, the sublessee)*”.

The amendment ensures that the Act applies to land held under a *land sublease*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 33 Section 47 (3) (a)

The clause substitutes existing sub-section (3) (a) with a new subsection (3) (a) to include land held under a *land sublease*.

The effect of the amendment is that the lessee or *sublessee* or occupier of the land may make an application for an environmental authorisation. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 34 Order to remediate land, Section 91D (3) (a)

The clause substitutes existing section 91D (3) with a new subsection (3) to include land held under a *land sublease*.

The effect of the amendment is that the authority may, by written notice, order the appropriate person to remediate the land. Section 91I provides a meaning for *appropriate person* and states the order of responsibility.

Currently sub-section (3) (a) specifically provides that the lessee of the land receives the notice and that the lessee may not be the occupier of the land. The amendment expands application of the subsection to the *sublessee* of land held under a *land sublease*. This means a notice may be served on the lessee or *sublessee* as appropriate. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 35 Section 91D (8)

The clause inserts the words “(or land under a *land sublease*, the *sublessee*” after “lessee”.

The effect of the amendment is that the responsible person for the land is either the lessee or *sublessee*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 36 Notification of certain people about orders for assessment or remediation, Section 91E (1)

The clause omits the words “occupier and, if the occupier is not the lessee, the lessee” from subsection (1) and replaces them with the words “relevant people in relation to”.

Amendments made by clause 37 inserts for the section a definition of *relevant person*. *Relevant person* is defined as the occupier of the land or if the occupier is not the lessee, the lessee or otherwise the *sublessee*. The amendment does not change the intent of the existing section.

Clause 37 New Section 91E (3)

The clause inserts a new subsection (3). New subsection (3) provides the meaning for relevant person for the purposes of section 91E.

Relevant person is defined as the occupier of the land or if the occupier is not the lessee, the lessee or otherwise the *sublessee*. The amendment does not change the intent of the existing section.

Clause 38 Choice of appropriate person, Section 91I (1) (b)

The clause substitutes existing subsection (1) (b) with a new subsection (1) (b).

New subsection (1) (b) provides that the appropriate person, for the purposes of section 91C (1) and section 91D (1) is either the lessee or for land held under a *land sublease* the *sublessee*. Subsection (1) (b) (ii) further provides that if the *sublessee* is not the practical person then the sublessor is the appropriate person otherwise the appropriate person is the person mentioned in paragraph (c) i.e. the notional lessee of the land.

The effect of the amendment is to ensure that appropriate person also includes the *sublessee* of land held under a *land sublease*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 39 Section 91I (4), definition of *notional lessee*

The clause inserts at subsection (4) an expanded definition of *notional lessee*.

The amendment inserts after “lease” the words “or *land sublease*”. The effect of the amendment is to ensure that notional lessee also includes a *sublessee* of land held under a *land sublease*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 40 Section 91I (4), definition of *notional lessee*, paragraph (c) (ii)

The clause inserts the words “or for land under a *land sublease*, the *sublessee*” after the first mention of “lessee”.

The effect of the amendment is to ensure that notional lessee also includes the *sublessee* of land held under a *land sublease*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 41 Section 91I (4), definition of *notional lessee*, paragraph (c) (ii)

The clause inserts the words “or *sublessee*” after the second mention of “lessee”.

The effect of the amendment is to ensure that *notional lessee* also includes the *sublessee* of land held under a *land sublease*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 42 Liability for losses, New section 91O (5)

The clause inserts a new subsection (5). New subsection (5) provides that for the purposes of the section *lessee* means *sublessor* and *sublessee*.

The effect of the amendment is to extend the application of the section to a *sublessee* of land held under a *land sublease*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 43 Environment protection orders, Section 125 (2) and (3)

The clause omits the words “occupier and, if the occupier is not the lessee, the lessee” from subsection (2) and subsection (3) and replaces them with the words “relevant people in relation to the land”.

Amendments made by clause 44 inserts for the section a definition of *relevant person*. *Relevant person* is defined as the occupier of the land or if the occupier is not the lessee, the lessee or otherwise the *sublessee*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 44 New subsection 125 (7)

The clause inserts a new subsection (7). New subsection (7) provides the meaning for *relevant person* for the purposes of section 125.

Relevant person is defined as the occupier of the land or if the occupier is not the lessee, the lessee or otherwise the *sublessee*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 45 Schedule 1, table 1.2, item 7, column 2

The clause inserts the words “or for land under a *land sublease*, the *sublessee*” after “lessee”.

Table 1.2 describes *Class A activities*. The amendment extends the meaning of *lessee* at item 7 column 2 to also include a *sublessee* of land held under a *land sublease*. The amendment does not change the intent of the existing section and is a consequential amendment.

Clause 46 Dictionary, new definition of *land sublease*

The clause inserts a new definition for *land sublease*.

Land sublease is a sublease of land as defined in the dictionary of the *Planning and Development Act 2007* (see clause 97). The amendment does not change the intent of the existing section and is a consequential amendment.

The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *First Home Owner Grant Act 2000*, *Land Tax Act 2004*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Part 8 Environment Protection Regulation 2005

Clause 47 Dictionary, note 3

The clause inserts at note 3 the words “*land sublease*”.

Note 3 provides that the terms listed have the as they have in the *Environment Protection Act 1997*. This means for the purpose of the regulation the term *land sublease* is the same as defined in the Act. Clause 46 inserts the definition of *land sublease* into the dictionary. The amendment does not change the intent of the existing *Note* and is a consequential amendment.

The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Duties Act 1999*, *First Home Owner Grant Act 2000*, *Land Tax Act 2004*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Clause 48 Dictionary, new definition of owner

The clause substitutes the current definition for *owner*.

The new definition for *owner* of land includes a lessee and for land under a *land sublease* the *owner* means the *sublessee*. The definition is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Land Tax Act 2004*, *Planning and Development Regulation 2008*, *Public Unleased Land Act 2013*, *Utilities Act 2000*, *Water and Sewerage Act 2000* and *Water Resources Act 2007*. This is a consequential amendment.

Clause 49 Dictionary, new definition of parcel

The clause inserts a new definition for *parcel*.

A *parcel* is a *parcel* of land under a territory lease including land under a *land sublease*. The definition is consistent with the definition in the *Environment Protection Act 1997* and the *Planning and Development Act 2007*. This is a consequential amendment.

Part 9 First Home Owner Grant Act 2000

Clause 50 Ownership of land and homes New section 5 (2) (aa)

The clause inserts a new section 5 (2) (aa).

New section (2) (aa) provides that for the purposes of the Act an *owner* is also a person who has a *relevant interest* in the land on which the home is built. The effect of the amendment

is to extend the Act to a person who has a *relevant interest* in the land held under a *land sublease* on which the home is built.

The amendment extends the first home *owner* grant scheme to persons who would own a home built on land held under a *land sublease*. This is a consequential amendment.

Clause 51 New section 5 (6)

The clause inserts a new section 5 (6). The purpose of the amendment is to provide a definition of *land sublease* for the section.

A *land sublease* means a sublease of land approved under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land) (refer clause 97) but **does not include** a building sublease. This is a consequential amendment.

The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *Land Tax Act 2004*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Part 10 Land Tax Act 2004

Clause 52 Dictionary, new definition of *land sublease*

The clause inserts a new definition of *land sublease*. A *land sublease* means a sublease of land approved under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land) (refer clause 97) but **does not include** a building sublease. This is a consequential amendment.

The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Clause 53 Dictionary, definition of *owner*, new paragraph (e)

The clause inserts a definition for *owner*. The new definition for *owner* of land includes a lessee and for land under a *land sublease* the *owner* means the *sublessee*. This is a consequential amendment.

The definition is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Environment Protection Regulation 2005*, *Planning and Development Regulation 2008*, *Public Unleased Land Act 2013*, *Utilities Act 2000*, *Water and Sewerage Act 2000* and *Water Resources Act 2007*. This is a consequential amendment.

Part 11 *Land Titles Act 1925*

Section 72D

The clause substitutes the existing section 72D Memorial of application of *Planning and Development Act 2007*, s251 to lease with the new section 72D.

New section 72D (1) extends the application of the section to a *declaration* under section 312B (of the *Planning and Development Act 2007*) (refer cause 94). This means that the registrar-general must enter in the register a memorial to provide that the Crown lease has been *declared* under new section 312B of the *Planning and Development Act 2007* (refer cause 94). Clause 94 inserts a new part in the *Planning and Development Act* to introduce a declaration process. If a declaration is made about a prescribed Crown lease the authority must give a copy of the declaration to the registrar-general. A declaration must be made by two Ministers, be in the public interest and is a notifiable instrument.

This means that the registrar-general must record any restrictions under section 251 of the *Planning and Development Act* as well as a declaration under new section 312B.

New section 72D (2) provides that the registrar-general must enter in the register a memorial on the prescribed Crown lease that it is a *declared Crown lease*. If a subsequent *declared land sublease* is registered the registrar-general must enter in the register a memorial on the sublease of land that it is a *declared land sublease* (refer cause 94); and for a lease of a unit or common property under a units plan created under a *declared land sublease* a memorial that the lease is a *declared land sublease*; and for land under a community title scheme that subdivides land under a *declared land sublease*, a memorial that the scheme is created under a *declared land sublease*.

The effect of the amendment is that a *declared land sublease* is noted as a memorial against the Crown lease and subleases creating a clear chain of title between the Crown lease and the *declared land sublease* (or a units plan or community title scheme created on land held under a *declared land sublease*).

Clause 55 Surrender of lease, New section 86 (4) (b)

The clause substitutes the existing section 86 (4) (b). Substituted section 86 (4) (b) provides that if the units plan was created under a *declared land sublease* that, under the *Unit Titles Act 2001*, new section 167B (refer clause 127) the surrender of the leases must be accompanied by a statutory declaration required under the *Unit Titles Act* new section 167A (refer clause 127).

The amendment has the effect of allowing the *owners* corporation, on behalf of the unit *owners* to surrender the leases so that further leases can be issued. Amendments made at clause 127 simplify the process for surrendering lease when the lease expires and a new lease is required. This process is called 'surrender/regrant'.

Clause 126 inserts in the *Unit Titles Act* a process for the grant of a further lease for a units plan created under a *declared land sublease*. A *land sublease*, that is not a *declared land sublease*, cannot be extended rather a new *land sublease* is required. However, this is not appropriate for a units plan created under a *declared land sublease*.

Provisions for a further lease for units plan created under a Crown lease are in the *Planning and Development Act 2007*, section 254. Section 254 is amended by clause 88 that inserts a new *Note* to provide that a further lease under the Unit Titles Act over land under a *declared land sublease* is granted under the Unit Titles Act, new section 176AA.

Existing processes creates administrative challenges that the proposed amendments address. The rights of unit *owners* are not affected and the rights of all *owners* to be granted a further lease are protected.

Clause 56 Lessee may sublet Section 88 (1), new note

The clause inserts a new *Note*. The Note provides that a *land sublease* cannot be registered by the registrar-general unless the planning and land authority gives approval of the sublease. Approval of a sublease of land is required under the *Planning and Development Act*, section 308 (Power of lessee to sublet part of land) (refer cause 94).

Section 308 is strengthened by amendments at cause 94 to ensure that a *sublessee* of land held under a *land sublease* has a right of access, that the sublease does not create an inconsistency with the *Land Titles Act 1925* or the *Planning and Development Act*, that the sublease does not include a provision that provides for an extension or the grant of a further sublease (a new sublease is required and needs approval of the planning and land authority). However, for a units plan created under a *declared land sublease* a further sublease, can be granted under the *Unit Titles Act 2001*, new section 167AA (refer clause 126).

The planning and land authority must approve the form of the sublease and can specify, by regulation (refer clause 103), those things that must be included or attached to the sublease e.g. survey plans, termination provisions or dispute resolution provisions.

A Crown lessee must provide, for approval of an executed sublease in the approved form. The planning and land authority must provide the executed and approved sublease to the registrar-general for registration under the *Land Titles Act 1925*. The registrar-general must enter the sublease in the register (refer clause 54).

Clause 57 New sections 88A to 88J

The clause inserts new sections 88A to 88J. The new sections apply to *land sublease* and governs the actions of a *land sublease* for registration, mortgages, transfers, further subleases, surrender and withdrawal of *land subleases*, payment for improvements, ACAT review and recovery of land if *sublessee* or licensee in unlawful possession of the land.

The new sections form the foundation of the protections for a *sublessee* of land held under a *land sublease*. Although a sublease of land is not a new concept it has been rarely used in the past. However, the effect of the Bill is that this will change and **no protections exist** presently for the management of ***land subleases*** other than normal civil actions through the Courts.

The new sections operate on a similar basis to provisions in the *Leases (Commercial and Retail) Act 2001* that deals with leases for *premises* (*premises* is defined at section 7 of the Act) and the *Planning and Development Act 2007* that deals with Crown leases. Importantly, the *sublessee* and sublessor have rights of redress to the ACT Civil and Administrative

Tribunal and the ACT Magistrates Court in prescribed circumstances. The right to other civil actions are not impacted by the provisions.

Together these new sections and amendments to provisions in the *Planning and Development Act 2007*, section 308 (refer clause 92) and the *Planning and Development Regulation 2008*, section 221 (refer clause 103) a new suite of protections for the *land sublease* are introduced.

New section 88A Application of *land sublease* provisions

New section 88A provides that new sections 88B to 88J do not apply to a sublease of land granted before the commencement of the section or if a units plan subdivides a *parcel* of land under a *declared land sublease* – a lease granted or arising under the *Unit Titles Act 2001*.

The effect of the new section 88A is that existing *land subleases* or leases or subleases of premises or a *declared land sublease* that has been unit titled is not affected by new sections 88B – 88J. These leases operate in the same manner as they presently do.

New section 88B Land subleases – registration

The registrar-general must not register a sublease of land unless the sublease has been approved in writing by the planning and land authority under the *Planning and Development Act 2007*, section 308. This section does not apply to a building sublease. The registrar-general must tell the planning and land authority in writing if the registrar-general registers a *land sublease*.

New section 88B provides an important corner-stone provision for the operation of the new leasing model. Presently there is no mandatory requirement to register any lease or sublease. However, because a mortgage is typically held over a lease or sublease the mortgagee requires the lease or sublease to be registered.

Mandatory registration will ensure that there is a clear chain of title of land held under the Crown lease and a sublease of land and *relevant interests* in that land. Because a sublease of land is always subordinate to the Crown lease it is important that the Crown lessee consents to transactions on the sublease and that *relevant interests* in the sublease are identifiable.

New section 88C Land subleases – mortgages

The clause inserts a new section 88C. New section 88C provides that a mortgage on a *land sublease* is not valid or binding against the sublessor (or their mortgagee if applicable) unless the sublessor has consented to the mortgage in writing.

In this section *mortgage* and *mortgagee* includes an encumbrance or emcumbrancee. This is consistent with the use of mortgage and encumbrance in the Act.

The amendment ensures that the sublessor i.e. the Crown lessee has a right to consent to a mortgage on land held under a *land sublease*. This is necessary as a *land sublease* is subordinate to the Crown lease. The provision is consistent with the requirement under section 84 of the Act.

New section 88D Land Subleases – transfers

The clause inserts a new section 88D. New section 88D provides that the registrar-general must not register a memorandum of transfer of a *land sublease* unless the sublessor consents in writing. The registrar-general must tell the planning and land authority in writing about the transfer. The new section does not apply to a building sublease.

Subsection (2) (a) and (b) provides the process for requesting consent to a transfer. A request must be in writing and the sublessor has 10 working days to request any further information about the proposed transfer. Subsection (2) (b) (i) (ii) and (iii) provides the things that the sublessor may request: information about the financial standing of the proposed transferee; the proposed use of the land by the proposed transferee; and the proposed transferee's ability to comply with the terms of the sublease.

Subsection (2) (c) provides that if the sublessor has a mortgage over the land the mortgagee is required to provide consent to any potential transfer. A mortgagee has 10 working days to respond to the request (unless the mortgagee asks for further information). If a mortgagee refuses consent to the transfer the mortgagee must provide the reasons for the refusal to the sublessor. Following consent or refusal of the mortgagee the sublessor must consent or refuse consent in writing to the *sublessee*.

Subsection (2) (d) provides that if mortgagee consent is not required then the sublessor must consent or refuse (including reasons for refusal) the request for transfer in writing.

Subsection (2) (e) provides that the *sublessee* is responsible for reasonable costs incurred by the sublessor in making a decision on the proposed transfer.

The note at the end of subsection (2) provides that where no limit is stated that the *Legislation Act 2001*, section 151B applies. For instance subsection (2) (c) (ii) states that the time period is 10 working days. However, subsection (2) (d) does not state a time period. This means the *Legislation Act* section 151B applies.

Section 151B provides that the thing must or may be done as soon as possible and as often as needed. For example, if it takes 3 days to do-a-thing normally than the thing must be done within 3 days despite the legislation not specifying 3 days. The effect of the provision is to ensure that parties act in a timely manner.

Subsection (3) provides that if the person that the request has been made too has not made a decision in the stated time then the person is taken to have consented to the request. The provision creates a new tag term of '*request receiver*'. A *request receiver* is the person who the request has been made to: the sublessor or mortgagee (if applicable).

The effect of the subsection is to provide consent to a request despite the person who the request was made to has not responded. For example, if mortgagee consent is required the mortgagee has 10 working days to consent or refuse consent to the request. If the mortgagee has not determined the request in the stated time consent is taken to be given. This would allow the sublessor to respond to the request at the end of 10 working days.

Subsection (3) (b) provides the grounds for refusing consent. Consent can be refused if the request receiver believes on reasonable grounds that the proposed transferee is not

financially sound; or intends to use the land for a purpose not allowed by the sublease; or cannot otherwise comply with the terms of the sublease; or the proposed transferee; or use of the land under the sublease, would not be compatible with other subleases; or the *sublessee* is in breach of the sublease.

Subsection (3) (c) provides that if the request receiver refuses consent, otherwise in accordance with the section, the *sublessee* may apply to the Magistrates Court may apply for an order. Subsection (3) (c) (ii) provides that if the Magistrates Court is satisfied that the request receiver refused consent otherwise than in accordance with the section, that the Court must make an order that the request receiver is taken to have consented to the request. The subsection requires that if an order is made the Crown lessee must present the lease to the registrar-general to allow registration of the transfer.

The effect of subsection (3) is that a sublessor or mortgagee (if applicable) cannot unreasonably with-hold consent to a proposed transfer and must act in a timely manner. Redress to the magistrates is a normal recourse under other legislation for similar matters. Further, the *Planning and Development Act 2007*, section 308 proposed new subsection (7) (refer clause 92) provides that a regulation can prescribe those things that the sublease must provide a provision for. The example at subsection (7) provides the types of things as a provision relating to the termination of a sublease of land, and a provision relating to dispute resolution.

Clause 103 inserts new section 221 in part 5.9 of the *Planning and Development Regulation 2008*. New section 221 (1) provides for those things that must be attached, included, provided for in a *land sublease*. New section 221 (1) (a) provides if the sublease is a declared land sublease that the sublease must indicate this. New section 221 (b) provides that the sublease must include a purpose clause that is consistent with the Crown lease. Subsection (d) requires survey plans, drafted in accordance with the practice directions issued under *Surveyors Act 2007*, section 55 and signed by the surveyor-general.

Subsections (1) (c) and (d) provide that the sublease must state if it is a *declared land sublease* and include a commencement date and term of the sublease. Subsection (1) (e) provides for what things must be included or accompanied with the sublease and deals with the requirements for utility services, including water, sewerage, electricity, gas etc to be capable of being provided to the subleased land. Subsections (1) (g) and (h) provide that the sublease must include termination and dispute resolution provisions that the planning and land authority considers fair and equitable between the parties.

Subsection (2) describes the intent of utility servicing for the sublease. Subsection (3) provides definitions for the new section 221 including utility services.

New section 88E Land subleases – no further subleases

The clause inserts a new section 88E. New section 88E provides that a sublease of land under a *land sublease* is not valid or binding. This section does not apply to a building sublease.

The effect of the new section is that a *sublessee* of a sublease of land cannot further sublease the land. Any sublease of land requires the approval of the planning and land

authority under section 308, as amended by clause 92. Further, the Crown lessee is the only person who can seek an approval to sublease land on the Crown lease.

Land can only be subleased with the approval of the planning and land authority under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land). If a sublease of land is proposed to be changed a new sublease and approval process is required. This is managed by the sublessor and requires the same things to happen as happened for the original sublease. In other words a sublease of land cannot be amended or otherwise changed: the original sublease of land must be terminated and a new sublease of land negotiated and approved.

New section 88F Land subleases – surrender

The clause inserts a new s88F. New section 88F provides that a *sublessee* may surrender a *land sublease* with the written consent of the sublessor or if a request to transfer the sublease is refused under new section 88D. If the land under the sublease is subject to a registered mortgage or encumbrance the mortgagee or encumbrancee must also consent to the surrender.

The effect of the new section 88F is to provide the sublessor a right to accept or not the surrender of a sublease of land. This is appropriate as the sublessor suffers a loss because of the surrender and may need to incur expenses in finding a replacement *sublessee*. Further, if the sublease is surrendered because consent to transfer, under new section 88D, has been refused the sublessor must pay for improvements in accordance with new section 88H.

New section 88G Withdrawal of land under *land sublease*

The clause inserts new section 88G. New section 88G provides that if part or all of the land under the sublease is withdrawn before the term of the sublease and the *sublessee* has complied with sublease provisions, relating to the construction of improvements on the land under the sublease, that new sections 88H and 88I apply.

New section 88H provides the circumstances and the method for determining the value of improvements on the land. Subsection (1) (b) provides that the *sublessee* must have been responsible for the cost of the improvements for a payment under the section to be made. In other words, if the improvements were already on the land under the sublease the sublessor is not required to pay the *sublessee* the value of those improvements. In this case the improvements already belong to the sublessor and the *sublessee* only had access to the improvements under the *land sublease*.

Subsection (1) (c) provides the circumstances for when improvements must be paid for. Subsection (1) (c) (i) provides that a circumstance is where the *sublessee* has not been granted a further sublease and subsection (1) (c) (ii) provides a circumstance where the *sublessee* has been granted a further sublease but only for part of the land under the old sublease.

Subsection (2) provides that the value of improvements is worked out under the *Planning and Development Act*, section 295. The effect of the subsection is to provide an amount determined under the Act that would apply if the Crown lessee were the Territory and the

sublessee were a Crown lessee. In other words a *sublessee* is treated the same as a Crown lessee would be if the Crown lessee surrendered, or otherwise ended, a Crown lease.

Subsections (3) and (4) provide that if the *sublessee* did not provide sufficient notice to the sublessor about not seeking a further sublease that the sublessor may deduct reasonable costs from the amount required to be paid to the *sublessee*.

Subsection (5) requires the sublessor to provide a notice to the *sublessee* about how the amount was worked out including an amount if subsection (4) applies. The effect of the subsection is to provide clear information to a *sublessee* about how the amount was worked out. This will allow the *sublessee* to decide if the amount is fair or whether they should seek a review of the amount through the ACAT.

New section 88I provides that *sublessee* may apply to the ACT Civil and Administrative Tribunal (ACAT) for a review of the amount determined under new section 88H. The ACAT may substitute the original amount or confirm the original amount.

New section 88H Surrender etc of *land sublease* – payment for improvements

The clause inserts new section 88H. New section 88H provides the circumstances and the method for determining the value of improvements on the land. Subsection (1) (b) provides that the *sublessee* must have been responsible for the cost of the improvements for a payment under the section to be made. In other words, if the improvements were already on the land under the sublease the sublessor is not required to pay the *sublessee* the value of those improvements. In this case the improvements already belong to the sublessor and the *sublessee* only had access to the improvements under the *land sublease*.

Subsection (1) (c) provides the circumstances for when improvements must be paid for. Subsection (1) (c) (i) provides that a circumstance is where the *sublessee* has not been granted a further sublease and subsection (1) (c) (ii) provides a circumstance where the *sublessee* has been granted a further sublease but only for part of the land under the old sublease.

Subsection (2) provides that the value of improvements is worked out under the *Planning and Development Act 2007*, section 295. The effect of the subsection is to provide an amount determined under the Act that would apply if the Crown lessee were the Territory and the *sublessee* were a Crown lessee. In other words a *sublessee* is treated the same as a Crown lessee would be if the Crown lessee surrendered, or otherwise ended, a Crown lease.

Subsections (3) and (4) provide that if the *sublessee* did not provide sufficient notice to the sublessor i.e. at least 6 months or a shorter period agreed between the parties about not seeking a further sublease that the sublessor may deduct reasonable costs from the amount required to be paid to the *sublessee*. Subsection (4) provides that these costs must be associated with subleasing the land to someone else. Under subsection (5) the sublessor is required to provide a notice stating the amount and how the amount was worked, for improvements and costs, out to the *sublessee*. Under new section 88I the *sublessee* may seek a review of the amount through the ACAT.

Subsection (5) requires the sublessor to provide a notice to the *sublessee* about how the amount was worked out including an amount if subsection (4) applies. B The effect of the

subsection is to provide clear information to a *sublessee* about how the amount was worked out. This will allow the *sublessee* to decide if the amount is fair or whether they should seek a review of the amount through the ACAT.

New section 88I provides that *sublessee* may apply to the ACT Civil and Administrative Tribunal (ACAT) for a review of the amount determined under new section 88H. The ACAT may substitute the original amount or confirm the original amount.

New section 88I ACAT review of value of improvements on land under *land sublease* etc

The clause inserts a new section 88I. New section 88I provides that *sublessee* may apply to the ACT Civil and Administrative Tribunal (ACAT) for a review of the amount determined under new section 88H. The ACAT may substitute the original amount or confirm the original amount.

New section 88J Recovery of land under *land sublease* if *sublessee* or licensee in unlawful possession

The clause inserts a new section 88J. New section 88J provides that if a person, who has been a *sublessee* of a *land sublease* and remains in possession of the land after the term of the sublease has ended or the sublease has been surrendered or otherwise ended i.e. an unlawful occupier, may be given written notice by the sublessor to vacate the land in a stated period.

If the unlawful occupier does not comply with the written notice the sublessor may apply to the Magistrates Court for an order that possession of the land be given to the sublessor. The Court may issue a warrant authorising a police officer, within 20 working days after the day the warrant is issued to enter the land and by force give possession of the land to the sublessor.

Clause 58 Covenants of lessees, New section 119 (2)

The clause inserts a new subsection 119 (2). New subsection (2) provides that the implied covenant does not apply to a *land sublease*.

The amendment is necessary as section 119 is not relevant for a *land sublease*. A consideration is paid for the sublease (not rent) and the covenant deals with a premises not land (refer section 119 (b)).

Clause 59 Powers in lessor, New section 120 (1A)

The clause inserts new section 120 (1A). New section 120 (1A) provides that the implied covenant does not apply to a *land sublease*. A *land sublease* means a sublease of land approved under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land) (refer clause 97) but **does not include** a building sublease.

The amendment is necessary as section 120 is not relevant for a *land sublease* as the covenant deals with a premises not land and provides that the lessor can inspect the premises (refer section 120 (1) (a)).

Clause 60 Dictionary, note 2

The clause inserts a new item in Note 2 of the dictionary. Note 1 provides that the *Legislation Act 2001* provides definitions that are relevant to the Act. Note 2 provides

examples of the definitions, in the Legislation Act, that are relevant to the Act. The clause inserts a new example of “ACAT”. ACAT means ACT Civil and Administrative Tribunal. This is a consequential amendment. The amendment is necessary because clause 57 inserts a new section 88I that allows a *sublessee* to apply to the ACAT for a review of an amount determined under new section 88H.

Clause 61 Dictionary, new definitions

The clause inserts in the dictionary a new definition of building sublease and declared land sublease.

A *building sublease* is defined in the *Planning and Development Act 2007* Dictionary. Clause 97 inserts the definition into that Act.

A *declared land sublease* is a declared land sublease as defined at new section 312C of the *Planning and Development Act 2007* (refer clause 94). . New section 312C provides that a *declared land sublease* means a sublease of land under a *declared Crown lease* and includes any *new land sublease* granted by the Crown lessee to the *sublessee* over land under a surrendered or expired *declared land sublease*. A *declared Crown lease* is a Crown lease that has been *declared* under new section 312B.

Clause 62 definition of *instrument*

The clause inserts a new definition of *instrument*. The clause omits sublease from the definition and extends the definition to include *land sublease* and a *building sublease*. A *land sublease* means a sublease of land approved under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land) (refer clause 97) but **does not include** a building sublease.

The effect of the amendment is to make it explicit that a *sublease of land* is an instrument for the purposes of the Act. A *building sublease* is a sublease of a building and is managed by the *Leases (Commercial and Retail) Act 2001*.

Clause 63 Dictionary, new definitions

The clause inserts new definitions in the dictionary. The new definitions inserted are: *land sublease* and *units plan*. A *land sublease* means a sublease of land approved under the *Planning and Development Act 2007*, section 308 (Power of lessee to sublet part of land) (refer clause 97) but **does not include** a building sublease.

The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Tax Act 2004*, *Leases (Commercial and Retail) Act 2001*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Units plan means a *units plan* as defined in the *Unit Titles Act 2001* dictionary. *Units plan* is defined as a *units plan* under section 7 of the Act. Section 7 provides that after units title application is approved, there is a units plan consisting of the stated documents mentioned at section 27. Section 27 provides that the documents are diagrams showing the subdivision (the effect of unit titling is to subdivide land under the *parcel*); a development statement, if applicable; a schedule of unit entitlement; and a schedule of rent and lease provisions. The

documents must comply with the requirements prescribed by regulation (refer *Unit Titles Regulation 2001*, division 2.4 Approval of units plan).

Part 12 Land Titles (Unit Titles) Act 1970

Clause 64 Duties of registrar-general after units plan registration, New section 10 (1) (f)

The clause inserts a new subsection 10 (1) (f). New section 10 (1) (f) provides that if a units plan subdivides a *parcel* of land under a *declared land sublease* a memorial on the certificate of title for the units must be made for the Crown lease and the Crown lessee mortgagee (if applicable).

New section 10 (1) (f) is related to amendments at clause 54 that provides that the registrar-general must enter in the register a memorial if the thing being registered is a *declared land sublease* or for a lease of a unit or common property under a units plan that subdivides land under a *declared land sublease*, that the units plan is created under a *declared land sublease* or for land under a community title scheme that subdivides land under a *declared land sublease*, that the community title scheme is created under a *declared land sublease*.

Declared land sublease means a land sublease granted under a declared Crown lease. Clause 97 inserts a new definition of *declared land sublease* in the Planning and Development Act dictionary. The dictionary provides that a *declared land sublease* is a *declared land sublease* under new section 312C. New section 312C (refer cause 94) provides that a *declared land sublease* means a sublease of land under a *declared Crown lease* and includes any *new land sublease* granted by the Crown lessee to the *sublessee* over land under a surrendered or expired *declared land sublease*. A *declared Crown lease* is a Crown lease that has been *declared* under new section 312B.

Clause 65 Effect of cancellation of units plan, Section 17 (1) and (2)

The clause substitutes existing section 17 (1) and (2). The new section 17 (1) and (2) adopts a plain English wording for the section. The amendment does not affect the operation of the existing section. A *relevant interest* is noted and applied to the new lease in the same way as it is applied to the cancelled lease.

New section 17 (2) uses the term “*relevant interest*”. Clause 67 inserts a new subsection (4). New subsection (4) provides a definition of *relevant interest*. *Relevant interest* is defined as a mortgage of the lease of the unit or if the units plan is created under a *declared land sublease* the Crown lessee and Crown lessee mortgagee (if applicable).

The *Unit Titles Act 2001*, section 162 provides for the effect of the cancellation of a units plan. Specifically section 162 (e) provides that a new lease arises over the *parcel* in the terms provided by section 163.

Clause 94 inserts a new definition of *declared land sublease* in the Planning and Development Act dictionary. The dictionary provides that a *declared land sublease* is a *declared land sublease* under new section 312C. New section 312C provides that a *declared land sublease* means a sublease of land under a *declared Crown lease* and includes any *new land sublease* granted by the Crown lessee to the *sublessee* over land under a surrendered

or expired *declared land sublease*. A *declared Crown lease* is a Crown lease that has been *declared* under new section 312B.

Clause 66 Section 17 (3)

The clause omits the words memorandum of mortgage and substitutes them with *relevant interest*. The amendment does not change the effect of the section.

Clause 67 inserts a new subsection (4). New subsection (4) provides a definition of *relevant interest*. *Relevant interest* is defined as a mortgage of the lease of the unit or if the units plan is created under a *declared land sublease* the Crown lessee and Crown lessee mortgagee (if applicable).

The amendment is related to amendments made at clause 63, clause 68 and clause 69.

Clause 67 New section 17 (4)

The clause inserts a new section 17 (4). New section 17 (4) inserts a definition for *relevant interest*. *Relevant interest* is defined as a mortgage of the lease of the unit or if the units plan is created under a *declared land sublease* the Crown lessee and Crown lessee mortgagee (if applicable). The amendment does not change the effect of the section.

The amendment is related to amendments made at clause 66, clause 68 and clause 69.

Clause 68 Duties of registrar-general on registration of order, Section 18 (1) (d)

The clause substitutes the existing section 18 (1) (d) with a new section 18 (1) (d). New section 18 (1) (d) provides that the registrar-general must enter on each folio of the register in relation to a new certificate of title, a memorial of any easement or *relevant interest*. Where there is two or *relevant interests* the new entry must preserve the priority of each *relevant interest*. The amendment does not change the effect of the section.

The amendment adopts a plain English wording for the section and uses the new tag term *relevant interest*. Clause 67 inserts new section 17 (4) inserts a definition for *relevant interest*. *Relevant interest* is defined as a mortgage of the lease of the unit or if the units plan is created under a *declared land sublease* the Crown lessee and Crown lessee mortgagee (if applicable).

The amendment is related to amendments made at clause 64, clause 65 and clause 67.

Clause 69 New section 18 (5)

The clause inserts a new section 18 (5). New section 18 (5) provides that for the section *relevant interest* means *relevant interest in a lease of a unit* as defined at section 17 (4) (refer clause 67). The amendment does not change the effect of the section.

The amendment is related to amendments made at clause 65, clause 66 and clause 67.

Clause 70 Registration of instruments granting further leases Section, 29 (1)

The clause substitutes existing section 29 (1) with a new section 29 (1). New section 29 (1) provides that if the planning and land authority grants further leases under the *Planning and Development Act 2007*, section 254 of the units and common property forming part of the registered units plan; or for a lease of a unit on a *parcel* of land under a *declared land*

sublease under the *Unit Titles Act 2001*, section 167AA (refer clause 126) of the units and the common property forming part of the registered units plan the section applies.

The amendment expands the existing provision to a further lease, granted under the *Unit Titles Act 2001*, new section 167AA (refer clause 126), of for a units plan created under a *declared land sublease*. The amendment does not otherwise change the effect of the section.

Clause 94 inserts a new definition of *declared land sublease* in the *Planning and Development Act 2007*. New section 312C provides that a *declared land sublease* means a sublease of land under a *declared Crown lease* and includes any *new land sublease* granted by the Crown lessee to the *sublessee* over land under a surrendered or expired *declared land sublease*. A *declared Crown lease* is a Crown lease that has been *declared* under new section 312B.

Clause 71 Dictionary, note 3

The clause inserts at *Note 3* a new item. *Note 3* provides that terms defined in the *Unit Titles Act 2001* have the same meaning for the Act. The *Note* includes examples of definitions. *Declared land sublease* is inserted as an example. Clause 132 inserts a new definition for *declared land sublease* in the dictionary for the *Unit Titles Act 2001*.

The definition points to the definition used in the *Planning and Development Act 2007*, section 312C (refer clause 94). New section 312C provides that a *declared land sublease* means a sublease of land under a *declared Crown lease* and includes any *new land sublease* granted by the Crown lessee to the *sublessee* over land under a surrendered or expired *declared land sublease*. A *declared Crown lease* is a Crown lease that has been *declared* under new section 312B.

Part 13 Leases (Commercial and Retail) Act 2001

Clause 72 What leases does this Act apply to? New section 12 (6) (ba)

The clause inserts a new section 12 (6) (ba). New section 12 (6) (ba) provides that the *Leases (Commercial and Retail) Act 2001* does not apply to a *land sublease*. The amendment makes it explicit that the Act does not apply to a sublease of land under a *land sublease*.

Clause 97 inserts a new definition of *land sublease* in the *Planning and Development Act 2007*, dictionary. A *land sublease* is defined as a sublease of land approved under section 308 of the Act but does not include a *building sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Tax Act 2004*, *Leases (Commercial and Retail) Act 2001*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

The purpose of the Act is to manage a commercial or retail lease of premises. *Premises* is defined at section 7 of the Act. Existing subsection (6) already excludes certain leases from the Act including a territory lease and a lease of vacant land.

Clause 73 Section 12 (7), new definition of *land sublease*

The clause inserts a new definition of *land sublease*. The definition points to the *Planning and Development Act 2007* dictionary.

Clause 97 inserts a new definition of *land sublease* in the *Planning and Development Act 2007*, dictionary. A *land sublease* is defined as a sublease of land approved under section 308 of the Act but does not include a *building sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Tax Act 2004*, *Leases (Commercial and Retail) Act 2001*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Part 14 Legislation Act 2001

Clause 74 Dictionary, definition of *territory lease*, paragraph (b)

The clause substitutes the existing definition of *territory lease* with a new definition. The new definition of *territory lease* provides that a *territory lease* does not include a *sublease of land* approved under the *Planning and Development Act 2007*, section 308 or any other sublease.

The effect of the amendment is to make it explicit that a *territory lease* does not include those things listed. The amendment does not otherwise change the definition: a *territory lease* continues to be a lease granted under the *Planning and Development Act 2007* or a lease granted under the *Unit Titles Act 2001*. Existing subsection (b) of the definition already provides that the definition **does not** include a sublease.

Clause 97 inserts a new definition of *land sublease* in the *Planning and Development Act 2007*, dictionary. A *land sublease* is defined as a sublease of land approved under section 308 of the Act but does not include a *building sublease*. The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Tax Act 2004*, *Leases (Commercial and Retail) Act 2001*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Part 15 *Planning and Development Act 2007*

Clause 75 Meaning of *development*, Section 7 (2), definition of *subdivision*, paragraph (b)

The clause substitutes existing section 7 (2) (b) with a new section 7 (2) (b). New section 7 (2) (b) provides that *subdivision* does not include a sublease. The existing section 7 (2) (b) provides that *subdivision* does not include subletting a sublease.

Existing sections 307 and 308 provide for the subletting part of a building and subleasing land. Proposed amendments to the *Land Titles Act 1925* (refer clause 57) new section 88E provides that a *land sublease* cannot be further subleased. A *land sublease* is defined as a sublease of land approved under section 308 of the Act but does not include a *building*

sublease. The effect of that amendment is that any sublease of land must be approved under section 308 of the *Planning and Development Act 2007*.

A sublease of a building or part of a building, that is not a dwelling is managed by the *Leases (Commercial and Retail) Act 2001*. The lease or rental of a dwelling is managed by the *Residential Tenancies Act 1997*.

The amendment does not change the definition of subdivision for the purposes of the Act.

Clause 76 Form of development applications, New section 139 (2) (ba)

The clause inserts a new section 139 (2) (ba). New section 139 (2) (ba) provides that if an application relates to land under a *land sublease* the application must be signed by the *sublessee* if the *applicant* is not the *sublessee*. And if the *applicant* is not the Crown lessee the application must also be signed by the Crown lessee.

A development application can be made by a person other than the lessee. For instance, a contracted building company may be the *applicant*. In this circumstance the Crown lessee would sign the development application as well as the representative of the building company.

Under the strengthened subleasing of land provisions (refer clause 92) subleasing of land may become more common. This means that a *sublessee* of the land must have a right to sign a development application for the subleased land if they are not the applicant. Further, as the land always remains part of the land held under a Crown lessee it is appropriate that the Crown lessee also signs the development application.

Under the amended provisions a development application, that relates to subleased land, will always be signed by at least two persons: the Crown lessee and the land *sublessee*. In some circumstances the development application may be signed by three persons: the Crown lessee, the land *sublessee* and the applicant.

The amendment relates to amendments at clause 77. The amendment does not otherwise change the effect of the provision.

The amendment is similar to amendments made at clause 83 that provides the same consent requirements to amend a development approval.

Clause 77 Amending development applications, Section 144 (2)

The clause substitutes existing section 144 (2). New section 144 (2) provides that if an application relates to land under a *land sublease* the application cannot be amended without the consent of the Crown lessee and the land *sublessee*.

The amendment relates to the amendments at clause 76. The effect of the amendment is to require the same level of consent if the applicant is not the Crown lessee or land *sublessee*. The amendment does not otherwise change the effect of the provision.

The amendment is similar to amendments made at clause 83 that provides the same consent requirements to amend a development approval.

Clause 78 Conditional approvals, New section 165 (2) (d)

The clause inserts a new section 165 (2) (d) 9i) and (ii). New section 165 (2) (d) 9i) and (ii) provides that if an application is for approval of a development on subleased land that an approval may contain a condition that the *sublessee* develops unleased territory land in a stated way. The provision further provides that a condition, for the subleased land, must not be inconsistent with the related Crown lease.

The effect of the amendment is to provide a mechanism for a *sublessee* of the land to complete stated works on unleased territory land the same as what can be imposed on a Crown lessee. The amendment is necessary because some development proposals may require works outside of the lease, or subleased land e.g. foot-path upgrade to cater for an increase in pedestrian traffic because of the development proposal.

The amendment does not otherwise change the effect of the provision.

Clause 79 End of development approvals for use under lease without lease variation, licence or permit, Section 186 (1) (a)

The clause inserts the words *declared* unit title lease at subsection (1) (a). The section 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 effect of the amendment is to extend the provision to a *declared unit title lease* (the *affected lease*). The amendment does not otherwise change the effect of the provision.

Clause 80 New section 186 (2) (f)

The clause inserts a new subsection 186 (2) (f). New section 186 (2) (f) provides that if, for a *declared* unit title lease, a further lease is not granted under the *Unit Titles Act 2001*, section 167AA (refer clause 126) the development approval ends.

The effect of the amendment is to end a development approval where the sublease related to the approval ends. The amendment does not otherwise change the effect of the provision.

Clause 81 New section 186 (5) (d)

The clause inserts a new subsection 186 (5) (d). Subsection (5) provides a number of circumstances for when a development approval does not end.

New section 186 (5) (d) provides that if, for a *declared* unit title lease, a further lease is granted under the *Unit Titles Act 2001*, section 167AA (refer clause 126) the development approval does not end. The effect of the amendment provides that a development approval continues to have effect to the further grant of a sublease. The amendment does not otherwise change the effect of the provision.

Clause 82 Section 186 (7), new definition of *declared unit title lease*

The clause inserts a new subsection 186 (7). Subsection (7) provides definitions for the section. The amendment inserts a definition for *declared unit title lease*. A *declared unit title lease* means a lease of a unit or common property in a units plan that subdivides land under a *declared land sublease*.

The amendment does not otherwise change the effect of the provision.

Clause 83 Applications to amend development approvals, new section 197 (3) (c)

The clause inserts new section 197 (3) (c). New section 197 (3) (c) provides that if an application to amend a development approval relates to land under a *land sublease* the application must be signed by the *sublessee* if the *applicant* is not the *sublessee*. And if the *applicant* is not the Crown lessee the application must also be signed by the Crown lessee.

The effect of the amendment is to require the same level of consent to amend a development approval if the applicant is not the Crown lessee or land *sublessee*. The amendment does not otherwise change the effect of the provision.

The amendment relates to amendments at clause 76, 78 and 84. The amendment does not otherwise change the effect of the provision.

Clause 84 Section 197 (4)

The clause inserts the words “or subsection (3) (c)” after the words “subsection (3) (b) (i)”. Section 197 (4) provides that the person who signs an application under subsection (3) (b) (i) is taken to be the applicant in relation to the application.

The effect of the amendment is to extend the provision to land under a *land sublease*. If the applicant is not the *sublessee* the application must be signed by the *sublessee*.

The amendment relates to the amendment at clause 83. The amendment does not otherwise change the effect of the provision.

Clause 85 Development applications for developments undertaken without approval, New section 205 (3)

The clause inserts a new section 205 (3). New section 205 (3) inserts the words “(or land under a *land sublease*, the *sublessee*)” after the word “land”.

Section 205 provides for a lessee of land where the development was undertaken without development approval to apply for approval for the development under part 7.3 (Development applications).

The effect of the amendment is to allow a *sublessee* of land under a *land sublease* to apply for development approval for development undertaken without consent.

The amendment does not otherwise change the effect of the provision. Importantly, making a development application for development undertaken without approval does not affect any proceeding under the part.

Clause 86 Definitions – ch 9 Section 234, definition of *subdivision*, paragraph (b)

The clause substitutes the existing definition of *subdivision* at (b) with a new definition. The new definition expands the existing definition to exclude a grant of a sublease. This means that a grant of a sublease is not *subdivision* for the purposes of the chapter.

The amendment does not otherwise change the effect of the provision.

Clause 87 Section 234, definition of *sublessee*

The clause omits the definition of *sublessee* from the section. The existing definition includes a *sublessee* of land and a *sublessee* of a building. However, the *Leases (Commercial and Retail) Act 2001* manages building leases and building subleases while this Act manages leases of land and subleases of land.

Now when *sublessee* is used in the Act it will take on its common meaning as defined in the Macquarie Dictionary. This amendment is related to the amendment at clause 98 that omits the definition of *sublessee* from the dictionary.

This amendment is also related to the amendment at clause 112 that inserts a new definition in the dictionary, of the *Planning and Development Regulation 2008*, for *owner*. The new definition of *owner* means the *sublessee* for land held under a *land sublease*.

A *land sublease* must be approved under section 308 of the Act. Clause 92 amends existing section 308.

Clause 88 Access to leased land from roads and road related areas, Section 248 (2)

The clause omits the words “by the planning and land authority”. The existing section 248 (2) provides that the planning and land authority must not grant a lease unless satisfied that, that during the term of the lease, the lessee will have access to the land under the lease.

The amendment is a technical amendment and not related to the main outcomes of the Bill.

Clause 89 Grant of further leases, Section 254 (1) (a), new note

The clause inserts a new *Note* for the section. The new *Note* provides that a grant of a further lease under the *Unit Titles Act 2001* over land under a *declared land sublease* is granted under that Act section 167AA (refer to clause 126). The main purpose of the *Note* is to direct a reader to the *Unit Titles Act 2001*, new section 167AA.

The Planning and Development Act only deals with the granting of a further lease for a units plan created under a Crown lease (not a *declared land sublease*). The amendment does not otherwise change the effect of the provision.

Clause 90 new section 254 (1A)

The clause inserts a new section 254 (1A). New section 254 (1A) provides that for a lease granted or arising under the *Unit Titles Act 2001* the *owners* corporation may apply on behalf of unit *owners* for a further lease under this Act. The provision provides that if the units plan was created under a *declared land sublease* that the further lease can only be granted under the *Unit Titles Act 2001*, new section 167AA (refer clause 126).

Clause 91 Consent to s 265 dealings, Section 266 (2)

The clause omits the words “sublet the lease” with the words “grant a sublease”. The existing section provides the matters the planning and land authority must consider when considering a request for consent to dealing in the lease under section 265.

The amendment is a technical amendment and is not related to the main outcomes of the Bill.

Clause 92 Section 308

The clause substitutes the existing section 308 with a new section 308. New section 308 is strengthened to ensure that a *sublessee* of land held under a *land sublease* has a right of access, that the sublease does not create an inconsistency with the *Land Titles Act 1925* or the Planning and Development Act, that the sublease does not include a provision that provides for an extension or the grant of a further sublease (a new sublease is required and needs approval of the planning and land authority).

New subsection (1) inserts two new *Notes*. New *Note 1* provides that a *sublessee* cannot further sublease the land under the sublease. This amendment is related to the amendment at clause 57. Clause 57 amends the *Land Titles Act 1925* to insert new sections 88A to 88J. New section 88E provides that a sublease of land under a *land sublease* is not valid or binding. Any sublease of land requires the approval of the planning and land authority. Further, the Crown lessee is the only person who can seek an approval to sublease land.

The effect of the amendment is that a *sublessee* of land cannot further sublease the land.

New *Note 2* provides that if a form of application or sublease is approved under section 425 that the form must be used. The effect of the *Note* is to alert the reader to the possibility of an approved form being made for the section. For example, the planning and land authority, under section 425, may approve an application form for the purposes of seeking approval to sublease land. The application form can require certain details and attachments that will allow the authority to determine the application.

New *Note 2* is related to proposed new section 308 (7) that provides that a regulation can prescribe the form of the sublease and a document that must be attached to or accompany the sublease.

The amendment does not otherwise change the operation of the subsection.

New subsection (2) provides that the planning and land authority must approve or refuse to approve a sublease of land not later than 10 working days after receiving the written request. The existing provision is silent on approval or refusal and timeframes.

The effect of the amendment is to provide a clear timeframe for the authority to determine a request.

New subsection (3) provides that the planning and land authority must approve a sublease of land unless the stated circumstances are met. Subsection (3) (a) provides that a regulation can prescribe criteria. Clause 102 amends the *Planning and Development Regulation 2008*, section 220 to insert three new criteria. The new criteria are that a sublease of land cannot be longer than 99 years; if the sublease authorises residential use the sublease must state the maximum number of dwelling allowed under the sublease; and if the sublease authorises non-residential use e.g. commercial that the sublease must state the maximum gross floor area of the buildings and structures permitted on the sublease.

A sublease of land may permit a combination of residential and non-residential meaning that the maximum number of dwellings and the maximum gross floor area of buildings and structures needs to be stated in the sublease. The information will allow the authority to monitor the scale and type of development happening on the subleased land.

The existing criterion continues to apply to a sublease of land meaning that any sublease of land approved under section 308 of the Act must still provide that the sublease must be for a use authorised by the lease.

New subsection 4 provides that the executed sublease, in the approved form, must be provided to the planning and land authority. The effect of the provision is to provide an executed sublease for the authority to provide to the registrar-general to register should the sublease be approved.

The amendment is related to amendments made by clause 57 that inserts a new section 88B in the *Land Titles Act 1925*. New section 88B provides that the registrar-general cannot register a *land sublease* unless it has been approved by the planning and land authority.

Existing section 425 provides that the authority can approve a form for a particular purpose. If a form is approved the form must be used. A form can be approved that includes a requirement for the executed *land subleased* must accompany an application for approval of a sublease of land under section 308 (1).

New subsection 5 provides that the planning and land authority must provide the executed approved sublease to the registrar-general for registration under the *Land Titles Act 1925*.

The authority must provide the executed sublease as soon as possible to the registrar-general. The *Legislation Act 2001*, section 151B applies. Section 151B provides that where no time is fixed for doing something that the thing must be done as soon as possible and as often as needed.

The amendment is related to amendments made by clause 57 that inserts a new section 88B in the *Land Titles Act 1925*. New section 88B provides that the registrar-general cannot register a *land sublease* unless it has been approved by the planning and land authority.

New subsection (6) provides that access provided under new subsection (3) (c) (ii) must not interfere with a building, garden or such on the land and must cause as little damage as possible to the lessee or *sublessee* or another sublessee of the land through which access is granted.

The amendment is related to the amendment at clause 88. The effect of the amendment is to provide that access to the subleased land is reasonable and provides minimal intrusion through land outside of the sublease. For example, access for the sublease of land cannot be through part of a premises or cause significant damage on the land used for access.

New subsection 7 provides that a regulation can prescribe the form of the sublease; a document that must accompany or be attached to a sublease; and a provision that must or must not be included in the sublease.

The effect of new subsection (7) (a) is to provide the capacity for the planning and land authority to approve the form of a sublease, ensuring that a sublease would comply with criteria prescribed for the sublease (refer clause 102) and does not propose anything contrary to the Act.

The effect of new subsection (7) (b) is to provide the capacity for the planning and land authority to state those things that must accompany or be attached to the sublease. Clause 103 inserts, in the *Planning and Development Regulation 2008*, a new section 221. New section 221 prescribes matters for a *land sublease* and includes a requirement at new section 221 (1) (d) that a sublease must include a plan of the land prepared in accordance with any relevant practice directions under the *Surveyors Act 2007*, section 55 and signed by the surveyor-general.

The effect of new subsection (7) (c) is to provide the capacity for the planning and land authority to state those provision that must or must not be in the sublease. For example, subsection (7) at the example provides that a sublease provision can be prescribed for *termination* for instance.

New section 221 prescribed matters for a *land sublease* and includes a requirement at new section 221 (1) (e) that a sublease must include a *termination* provision that is fair and equitable.

New subsection 8 provides that a sublease cannot be inconsistent with this Act or the *Land Titles Act 1925*; or allow an extension of the term of the initial term of the sublease; or allows a grant of a further sublease.

The effect of new subsection (8) is to provide that a provision of a sublease that allows an extension to the initial term or grants a further sublease is voided and a provision that is inconsistent with this Act or the *Land Titles Act 1925* is only void to the extent of the inconsistency. For example, clause 57 inserts a new section 88D for the *Land Titles Act 1925* that provides the circumstances for a transfer of a sublease therefore a sublease provision cannot confer different transfer rights. The whole of the sublease is not voided only the relevant provision.

New subsection (9) provides that nothing in this Act, by itself, creates an obligation on the sublessor to grant a further sublease lease of land or a new sublease of land.

The effect of the new subsection is to make it explicit that the sublessor is not obliged to grant a sublease of land and has a right to consider each further sublease i.e. a new sublease of land and is not bound because the land had previously been subleased (to the same or a different *sublessee*).

New subsection 10 provides that the section does not apply to land sublet under existing section 309. Existing section 309 provides that if a lease authorises the use of the land for a mobile home park that part of the land may be sublet. Section 309 provides definitions for *mobile home* and *mobile home park*.

Clause 93 Access to lease documents and development agreements, New section 311 (2) (d)

The clause inserts a new section 311 (2) (d). New section 311 (2) (d) extends the provision to a *land sublease*. Subsection (2) provides for those things that are not exempt, unless subsection (1) applies, from the *Freedom of Information Act 1989* (Cwlth) and includes a lease, a variation of a lease or a renewal of a lease. Subsection (1) provides for those things that are exempt.

The effect of the amendment is to provide that a *land sublease* is not exempt from the *Freedom of Information Act 1989*.

Clause 94 New part 9.13

The clause inserts new part 9.13, Declared subleases of land. The new part includes provisions that create a new capacity to declare a Crown lease for the purposes of the Act. New part 9.13 is related to amendments made at part 11 *Land Titles Act 1925* and part 19 *Unit Titles Act 2001* of the Bill. Importantly, the provisions make it possible for a *sublessee* of land under a *declared Crown lease* to make application under the *Unit Titles Act 2001* to unit title a building on the subleased land. Previously, the definition of *parcel* in that Act precluded a unit title application for part of a *parcel*. Clause 120 inserts a *Note* at section 5 to provide that *parcel* includes land under a *declared land sublease*.

New section 312B Declared Crown leases

The clause inserts new section 312B for Part 9.13 Declared *land subleases*. New section 312B provides the process for a prescribed Crown lessee (refer new subsection (6)) to seek a declaration. New section 312C is the second part of the framework for the new leasing model that provides that a sublease of land under a *declared Crown lease* is a *declared land sublease*.

New subsection (1) provides that the Minister i.e. the planning Minister and another Minister may together declare a Crown lease to be a *declared Crown lease* if it is in the *public interest*. The planning Minister cannot alone make the declaration (neither can another Minister).

New subsection (2) provides those matters that the Ministers must consider to determine if a declaration would be in the public interest. The Ministers must consider whether making the declaration is likely to encourage development of the land under the *declared Crown lease* and that it has a substantial benefit to the ACT community; if the declaration would cause any disadvantage to the ACT community taking into account potential uses that are consistent with the territory plan and whether the uses are authorised by the lease; whether the development of part of the land under the *declared Crown lease* is likely to be part of a larger development and what that development will involve; and whether making the declaration will encourage development of the land under the *declared Crown lease*.

The *public interest* test is an important aspect of the new leasing model and is modelled on the *public interest* test for direct sales of land or the deconcessionalisation of a concessional lease.

New subsection (3) provides that a *declaration* is a notifiable instrument. A notifiable instrument must be notified under the *Legislation Act 2001*. The instrument is placed on the ACT Legislation Register and is available to the community.

New subsection 4 (a) provides that a declaration may only be amended or revoked to correct an error. New subsection (4) (b) provides that even if the status of a Crown lease changes i.e. it no longer meet the definition of *prescribed Crown lease* a declaration made under new section 312B continues to apply to the lease. *Prescribed Crown lease* is defined at new subsection (6).

New subsection (5) provides that if a declaration is made the planning and land authority must provide a copy of the declaration to the registrar-general. New subsection (5) is related to amendments made at clause 54 to the *Land Titles Act 1925*. Clause 54 amends existing section 72D to provide that if a declaration is made under section 312B of the *Planning and Development Act 2007* the registrar-general must enter a memorial on the Crown lease and any subsequent sublease of land (or a units title plan or community title scheme created under a *declared land sublease*) in the register about the declaration.

New subsection (6) provides a definition of prescribed Crown lease for new section 312B. A Prescribed Crown lease means a perpetual Crown lease held by the University of Canberra or a perpetual Crown lease held by the Australian National University prescribed by regulation.

The effect of the amendment is to provide that the University of Canberra is a prescribed Crown lease and can access the unit title provisions inserted by the Bill at part 19 *Unit Titles Act 2001*. Whereas the Australian National University cannot access these provisions unless a perpetual Crown lease held by the University is prescribed by regulation.

Presently the University of Canberra is the only perpetual Crown lessee who has approached Government to seek support to develop land held under the perpetual Crown lease. The Australian National University can similarly seek support of Government to develop land held under one of their perpetual Crown leases. The framework for the new leasing model also allows Government to expand the application of the framework to other lessees by a further Act amendment.

New section 312C Declared *land subleases*

New section 312C provides that a *land sublease* created under a *declared Crown lease* is a *declared land sublease*. Subsection (1) provides a definition for the Act for *declared land sublease*. Subsection (1) (a) provides that a *land sublease* under a *declared Crown lease* is a *declared land sublease*.

Subsection (1) (b) provides that any new *land sublease* granted by the Crown lessee to the *sublessee* over a surrendered or expired *declared land sublease* remains a *declared land sublease* i.e. the ending of one *declared land sublease* does not stop further *land subleases* being a *declared land sublease*.

The effect of the new section is that any sublease of land, now or into the future, under a *declared Crown lease* is a *declared land sublease*: there is no option to make a sublease of land not a *declared land sublease*.

Subsection (2) provides a definition of *declared Crown lease* for the section. The definition directs the reader to new section 312B. New section 312B (1) provides a *declared Crown*

lease is a *prescribed Crown lease* that has been *declared* by the Planning Minister and one other Minister.

Clause 95 Definitions – ch 13 Section 407, definition of *eligible entity*

The clause substitutes the definition of *eligible entity* with a new definition. *Eligible entity* means an entity mentioned in schedule 1, column 3 for the decision; and for a reviewable decision in relation to a development application or development approval if the applicant is not the lessee and includes the lessee for a *land sublease* or the *sublessee*.

The effect of the amendment is that the same rights of review are maintained for a Crown lessee for any development application on subleased land. Likewise, the *sublessee* has similar review rights.

Clause 96 Reviewable decisions, eligible entities and interested entities Schedule 1, new item 40A

The clause inserts new item 40A into Schedule 1. Schedule 1 provides for those decisions made under the Act that are reviewable. It also identifies the decision-maker, the eligible entities and interested entities.

The new item provides that a decision under amended section 308 of the Act to refuse to approve a sublease of land is a reviewable decision. The amendment is related to amendments made at clause 92 that amends existing section 308 and the eligible entities to include an applicant for approval of sublease.

Clause 97 Dictionary, new definitions

The clause inserts new definitions in the dictionary. The new definitions are: *building sublease*, *declared land sublease*, and *land sublease*.

Building sublease means a sublease mentioned in section 307 (Power of lessee to sublet part of building). The new definition does not affect the operation of section 307. The amendment makes it explicit that a *land sublease* does not include a *building sublease*. The amendment was necessary because a sublease of a building is very common whereas a sublease of land is not and to not define both subleases could create misunderstandings. This was particularly important as the lease of a building or premises on land is a lease of the building only and not the land. A building sublease, for premises, comes under the *Leases (Commercial and Retail) Act 2001*.

A *declared land sublease* means a *land sublease* under a *declared Crown lease* (refer section 312C (1)).

A *land sublease* means a sublease of land approved under section 308 (Power of lessee to sublet part of land) but does not include a building sublease. The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Tax Act 2004*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Public Unleased Land Act 2013*, *Utilities Act 2000* and *Water Resources Act 2007*.

Clause 98 Dictionary, definition of *sublessee*

The clause omits the definition of *sublessee* from the dictionary. The existing definition includes a *sublessee* of land and a *sublessee* of a building. However, the *Leases (Commercial and Retail) Act 2001* manages building leases and building subleases while this Act manages leases of land and subleases of land.

Now when *sublessee* is used in the Act it will take on its common meaning as defined in the Macquarie Dictionary. This amendment is related to the amendment at clause 85 that omits the definition of *sublessee* from section 234.

This amendment is also related to the amendment at clause 112 that inserts a new definition in the dictionary, of the *Planning and Development Regulation 2008*, for *owner*. The new definition of *owner* means the *sublessee* for land held under a *land sublease*.

Part 16 Planning and Development Regulation 2008

Clause 99 Details to be included in exemption assessment application – Act, s138B (2) (a) (iii), New section 22 (a) (ii)

The clause inserts a new section 22 (a) (iii). New section 22 (a) (iii) provides that an application for an exemption declaration must also include the sublease plan number if the exemption assessment application relates to a development on subleased land.

The effect of the amendment is to ensure that identifying detail, for the subleased land, is included in an application. The amendment does not otherwise affect the operation of the provision.

Clause 100 Preparation of EIS—Act, s 208 (1) Section 50 (2) (c) (v) (A) and (B)

The clause substitutes existing section 50 (2) (c) (v) (A) and (B) with a new section 50 (2) (c) (v) (A) and (B). New section 50 (2) (c) (v) (A) and (B) provides that an EIS for leased land must include the block and section number; the division of the land; and the volume and folio of the Crown lease. Also if the EIS relates to land under a sublease the application must also the sublease plan number.

The amendment does not otherwise affect the operation of the provision.

Clause 101 Section 220 heading

The clause substitutes the existing heading with a new heading to reflect amended section 308 of the *Planning and Development Act 2007* (refer clause 92). The new heading is *Criteria for giving in-principle approval of sublease of land – Act, s 308 (3) (a)*.

Clause 102 New section 220 (1) (b)

The clause substitutes existing section 220 (1) (b). New section 220 (1) (b) provides the new criteria are that a sublease of land cannot be longer than 99 years; if the sublease authorises residential use the sublease must state the maximum number of dwelling allowed under the sublease; and if the sublease authorises non-residential use, e.g. mixed use including commercial, that the sublease must state the maximum gross floor area of the buildings and structures permitted on the sublease.

A sublease of land may permit a combination of residential and non-residential meaning that the maximum number of dwellings and the maximum gross floor area of buildings and structures needs to be stated in the sublease. The information will allow the authority to monitor the scale and type of development happening on the subleased land.

The existing criteria continue to apply to a sublease of land meaning that any sublease of land approved under section 308 of the Act must still provide that the sublease must be for a use authorised by the lease. The amendment is related to amendments made at clause 92.

Clause 103 New section 221

The clause inserts a new section 221. New section 221 prescribes matters for a *land sublease*. Normally the provisions of a sublease are negotiated between the parties. However, under the new leasing model a sublease of land is managed in a way similar to a Crown lease. For instance, amendments made by part 11 *Land Titles Act 2001*, provide new provisions for how a sublease of land can be managed.

For those matters not prescribed in legislation amendments in the *Planning and Development Act 2007*, section 308 (refer clause 92) provide a next level of management for those matters not covered in the Land Title Act amendments. Together the amendments provide protections to a *sublessee* of land that has not been available before. The amendments do not intrude into commercial aspects of the negotiations between the parties.

New subsection (1) (a) provides that if the sublease is a *declared land sublease* that this must be stated.

New subsection (1) (b) provides that a sublease of land must include a purpose clause that is consistent with the Crown lease.

New subsection (1) (c) provides that a sublease must state the commencement date and the term of the sublease. A sublease cannot include a provision that allows a further sublease of the land. Amended section 308 (8) (b) of the *Planning and Development Act 2007* (refer clause 92) provides that a sublease cannot allow an extension of the initial term of the sublease. If a provision is included in the sublease the provision is voided under section 308 (8).

New subsection (1) (d) provides that a sublease must include a plan of the land prepared in accordance with any relevant practice directions under the *Surveyors Act 2007*, section 55 and signed by the surveyor-general.

New subsection (1) (e) provides that a sublease must include a *termination* provision that is fair and equitable.

New subsection (1) (f) provides that a sublease must include a *dispute resolution* provision considers is fair and equitable.

New subsection (1) (g) provides that the sublease must be accompanied by or include a written statement from each relative utility provider that utility services are available to the

land under the *land sublease*. Plans for the provision of utility services, drawn in accordance with relevant Australian Standards are also required to be provided.

The effect of the provision is to demonstrate to the planning and land authority, when assessing an application for a sublease of land that the utility services can be connected to the boundary of the subleased land. The amendment is related to the amendment at clause 92 that provides that the planning and land authority must not approved a sublease of land unless the land can be connected to utility services at the boundary of the sublease land.

This requirement is necessary to ensure that each party to the sublease of land i.e. the sublessor and *sublessee* negotiates access through land outside the subleased land boundary for the provision of utility services. A sublease of land must not be dependent on the Crown lease for utility services. This is particularly important if a building on the subleased land is subsequently unit titles.

New subsection (1) (h) provides that a sublease must be accompanied by or include plans in accordance with any relevant Australian Standard showing that satisfactory road access for municipal services is available.

New subsection (2) provides that for the section, a *utility service is available to the land under a land sublease* if the service can be connected at the boundary of the subleased land. The purpose of the subsection is to provide what is required for “*utility services are available to the land under the land sublease*” at subsection (1) (g) and (h).

New subsection (3) provides definitions for the section. The primary definition is ‘utility services’ and includes electricity services, gas services, sewerage services, telecommunication services and water services. The definition for each of these services is in the *Utilities Act 2000*, sections 6,9 and 13 for electricity, gas and sewerage services and the *Telecommunications Act 1997* (Cwlth), section 7 for telecommunication services.

Clause 104 Schedule 1, section 1.110 (3), definition of *lessee*

The clause substitutes the existing definition of lessee with a new definition. The new definition of lessee is expanded to include the *sublessee* of land held under a *land sublease*.

The effect of the amendment is to provide the same capacity to rebuild a damaged building or structure in prescribed circumstances to a *sublessee* of land under a *land sublease* as what is available to a Crown lessee. The amendment does not otherwise change the effect of the provision.

Clause 105 Permitted variations to approved and exempt developments Schedule 1A, section 1A.11 (4)

The clause omits *exemption declaration*. This is a technical amendment and does not otherwise change the operation of the provision. The amendment is related to the amendment at clause 106 that inserts a definition at subsection (5) for *exemption declaration*.

Clause 106 Schedule 1A, section 1A.11 (5), new definitions

The clause inserts a new definition of *exemption declaration* for the section. The effect of the amendment is to relocate the existing definition for *exemption declaration* from

subsection (4) to this subsection. This is appropriate as the subsection already includes definitions for the section.

The clause also inserts a new definition for *lease* to include a *land sublease*.

Clause 107 Matters exempt from third-party ACAT review Schedule 3, part 3.2, item 6, column 2, paragraph (g) (iii)

The clause inserts the words “, or *land sublease*” after the word “lease”.

The effect of the amendment is to extend the provision to land under a *land sublease*. The amendment does not otherwise effect the operation of the provision.

Clause 108 Schedule 3, part 3.2, item 8, column 2, paragraph (e)

The clause inserts the words “, or *land sublease*” after the word “lease”.

The effect of the amendment is to extend the provision to land under a *land sublease*. The amendment does not otherwise effect the operation of the provision.

Clause 109 Dictionary, note 2

The clause inserts at *Note 2* the *surveyor-general*. The amendment is necessary because of the amendment at clause 103 provides at section 221 (1) (d) that plans for the subleased land must be signed by the surveyor-general. The purpose of *Note 2* is to provide that the terms listed are defined in the *Legislation Act 2001* (see dictionary – *surveyor-general*).

Clause 110 Dictionary, note 3

The clause inserts at *Note 3* *declared land sublease*. The amendment is necessary because of the amendment at clause 103 section 221 (1) (a) that uses the term *declared land sublease*. The purpose of *Note 3* is to provide that the terms used in the regulation have the same meaning as they have in the *Planning and development Act 2007*. *Declared land sublease* is inserted as an example and is defined in the Act at new section 312C inserted by cause 94.

Clause 111 Dictionary, definition of *block*

The clause substitutes the existing definition of *block* with a new definition. The new definition of *block* means a block under the *Districts Act 2002*, or for land under a *land sublease* the land identified in the registered sublease plan.

Clause 112 Dictionary, new definition of *owner*

The clause inserts a new definition for *owner*. The new definition is necessary because in the context of provisions in the regulation an *owner* may be the lessee or the *sublessee* for land held under a *land sublease*.

The new definition for *owner* of land includes a lessee and for land under a *land sublease* the *owner* means the *sublessee*. The definition is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Environment Protection Regulation 2005*, *Land Tax Act 2004*, *Public Unleased Land Act 2013*, *Utilities Act 2000*, *Water and Sewerage Act 2000* and *Water Resources Act 2007*. This is a consequential amendment.

Part 17 Public Unleased Land Act 2013

Clause 113 Dictionary, definition of *owner*, paragraph (a)

The clause substitutes the definition of *owner*, paragraph (a) to define *owner* to mean the lessee of the land or for land under a *land sublease*, the *sublessee*. This is a consequential amendment.

The new definition for *owner* of land includes a lessee and for land under a *land sublease* the *owner* means the *sublessee*. The definition is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Environment Protection Regulation 2005*, *Land Tax Act 2004*, *Planning and Development Regulation 2008*, *Utilities Act 2000*, *Water and Sewerage Act 2000* and *Water Resources Act 2007*. This is a consequential amendment.

Clause 114 Dictionary, new definition of *land sublease*

The clause inserts a new definition for *land sublease*. *Land sublessee* is defined in the *Planning and Development Act 2007*, dictionary. A *land sublease* is approved under section 308 of that Act (refer clause 92).

The definition of *land sublease* is consistent with the proposed amendments to the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Tax Act 2004*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Rates Act 2004*, *Utilities Act 2000* and *Water Resources Act 2007*.

Part 18 Rates Act 2004

Clause 115 Definitions for pt 7 Section 45

The clause inserts the words “In this part:” after the heading. This is a technical amendment.

Clause 116 Definitions for pt 7, Section 45, definition of *owner*, new paragraph (a) (ia)

The clause inserts new subsection (a) (ia). New subsection (a) (ia) extends the existing definition for *owner* to include an *owner* who is a *sublessee* of land held under a *declared land sublease* (or each *sublessee* if there is more than one *sublessee*).

Clause 94 inserts a new definition of *declared land sublease* in the *Planning and Development Act 2007*. New section 312C provides that a *declared land sublease* means a sublease of land under a *declared Crown lease* and includes any *new land sublease* granted by the Crown lessee to the *sublessee* over land under a surrendered or expired *declared land sublease*. A *declared Crown lease* is a Crown lease that has been *declared* under new section 312B.

Clause 117 Dictionary, new definition of *declared land sublease*

The clause inserts a new definition for *declared land sublease*. Clause 94 inserts a new definition of *declared land sublease* in the *Planning and Development Act 2007*. New section 312C provides that a *declared land sublease* means a sublease of land under a

declared Crown lease and includes any *new land sublease* granted by the Crown lessee to the *sublessee* over land under a surrendered or expired *declared land sublease*. A *declared Crown lease* is a Crown lease that has been *declared* under new section 312B.

Clause 118 Dictionary, definition of *owner*, new paragraph (a) (v)

The clause inserts a new paragraph (a) (v) to include *owner* to mean for a *parcel* of land held under a *declared land sublease* the *sublessee*. This is a consequential amendment.

Clause 119 Dictionary, definition of *parcel*

The clause substitutes the existing definition for *parcel*. A *parcel* includes a part of a *parcel* of land that is separately held by an occupier, tenant, lessee or *owner* and land held under a *declared land sublease*.

Part 19 Unit Titles Act 2001

Clause 120 Parcels Section 5, new note

The clause inserts a new *Note*. Section 5 provides the meaning of *parcel* for the Act. The effect of the amendment is to provide that land, that is part of a *parcel* of land held under a Crown lease, can be subject to a unit title application if the Crown lease has been *declared* under new section 312B of the *Planning and Development Act 2007* (refer cause 94).

The amendment is part of the new leasing model framework that will allow a building on land held under *declared land sublease* to be unit titled. This capacity is restricted to prescribed Crown leases (refer cause 94, new section 312C). The amendment is also related to amendments made at clause 122 that provides a new process for the *sublessee* of a *declared land sublease* to seek consent of the sublessor to make a unit title application.

Clause 121 Minor boundary changes, Section 16 (c)

The clause inserts *declared land sublease*. The effect of the amendment is to provide that minor boundary change would not result in any inconsistency arising with the provisions of the lease or any *declared land sublease* under which any of the units, or the common property, is held.

The amendment does not otherwise change the operation of the provision.

Clause 122 New section 17A

The clause inserts new section 17A. New section 17A provides the process for a *sublessee* of a *declared land sublessee* to seek consent of the Crown lessee to a unit title application.

The Crown lessee must consent to any application under the Act. This is necessary as other amendments at clause 57 places obligations on the Crown lessee (i.e. the sublessor) if a *declared land sublease* is unit titled. Importantly new section 88H of the *Land Titles Act 1925* requires the sublessor to pay for improvements on the land under certain circumstances e.g. if a subsequent units plan is cancelled or otherwise ended or a further lease for the units is not granted. Because of this it is important that the Crown lessee has a right to consent to a unit title application.

Further, new section 167AA, inserted by clause 126, provides for the process for the *owners* corporation, of a units plan created under a *declared land sublease*, to seek a further lease from the Crown lessee.

New subsection (2) provides that the Crown lessee must consent in writing to an application.

New subsection (3) provides the process to seek the Crown lessee's consent.

New subsection (3) (a) provides that the *sublessee* must make the request for consent in writing to the Crown lessee.

New subsection (3) (b) provides that within 10 working days of receiving the request the Crown lessee may in writing request further information about the proposed subdivision of the land under the *declared land sublease*.

New subsection (3) (c) (i) provides that if the Crown lessee has mortgaged the land under the Crown lease, and mortgagee consent is required under the terms of the mortgage that the Crown lessee must tell the mortgagee about the request and provide any additional information as requested. The information that can be requested, if not already supplied by the sublessee are those things at new subsection (3) (b).

New subsection (3) (c) (ii) provides that the mortgagee must consent or refuse consent and advise the Crown lessee and *sublessee* in writing. If the request is refused the mortgagee must provide the reason for the refusal. The provision also provides that the mortgagee can also request further information from the Crown lessee. The Crown lessee must request this information from the *sublessee* and supply it to the mortgagee.

New subsection (3) (c) (iii) provides that the Crown lessee must consent or refuse consent in writing to the *sublessee*.

New subsection (3) (d) provides that if mortgagee consent is not required the Crown lessee must consent or refuse consent within 10 working days (unless further information has been requested) and advise *sublessee* in writing. If the request is refused the Crown lessee must provide the reason for the refusal.

New subsection (3) (e) provides that the *sublessee* is responsible for the reasonable costs of the Crown lessee, and the Crown lessee's mortgagee (if consent is required) in making a decision about the request.

A new *Note* is included at the end of the section to provide that if no time period is provided for doing a thing then the thing must be done as soon as possible (refer Legislation Act 2001, section 151B).

New subsection (4) (a) provides the circumstances for when consent is deemed to have been given if consent is not given in the relevant time period. The effect of the provision is to provide that the *sublessee* does not have to wait indefinitely for the Crown lessee and, if needed, the mortgagee to consent or refuse the request.

New subsection (4) (b) provides for when consent can be refused. The Crown lessee or mortgagee can only refuse consent if they believe on reasonable grounds that the proposed subdivision of land will not be compatible with other subleases under the Crown lease or the *sublessee* is in breach of the sublease.

New subsection (4) (c) provides if consent is refused that the *sublessee* can seek redress to the Magistrates Court. The Magistrates Court can support the refusal or if the refusal is not in accordance with new subsection (4) (b) the Court must order that consent is taken to be granted. The new sub section does not preclude the *sublessee* and Crown lessee negotiating the matter.

Clause 123 New section 33 (3A)

The clause inserts a new section (3) (a) that provides for subsections (2) and (3); registration of a units plan that subdivides a *parcel* of land under a *declared land sublease* ends the sublease. The amendment is a consequential amendment and does not otherwise change the operation of the provision.

Clause 124 Part 12 heading

The clause substitutes the existing heading with a new heading. The new heading “Part 12, Lease variations and grants of further leases” reflects the amendments made at clause 126 that substitutes the heading for the division. The new heading for the division is “Division 12.2 Grants of further leases”. The previous heading of “Surrender of leases in units” is no longer reflective of amended section 167A and new section 167AA.

Clause 125 Development applications to vary lease under *Planning and Development Act 2007*, New section 166 (1) (d)

The clause inserts a new section 166 (1) (d). New section 166 (1) (d) provides that if the unit or common property lease is in a units plan that subdivides a *parcel* of land under a *declared land sublease* – the Crown lessee consents in writing to the application.

The amendment is related to amendments at clause 76 for the *Planning and Development Act 2007*, section 139 (2) (ba) that provides that sublessee must obtain the consent of the Crown lessee to a development application that relates to land held under a *land sublease*.

The effect of the amendment is that a development application for a units plan created under a *declared land sublease* must have the consent of the Crown lessee. This is different to a development application for a units plan created under a Crown lease where no further consent is required.

Clause 126 Part 12 heading

The clause substitutes the heading and inserts new section 167AA. The new heading for the division is “Division 12.2 Grants of further leases”. The previous heading of “Surrender of leases in units” is no longer reflective of amended section 167A and new section 167AA.

Division 12.2 Grants of further leases

This section applies to granting of further leases for a units plan created under *declared land sublease*.

New Section 167 AA Declared *land subleases* – grant of further leases

This section applies to *declared land subleases* of a units plan and the granting of further leases. The provisions are drafted around the provisions that apply to a further lease for a units plan created under a Crown lease (refer section 254 of the Planning and Development Act 2007).

New subsection (1) provides that the subsection applies if the unit owners intend to apply to the Crown lessee for the grant of a further lease.

New subsection (2) provides that the Crown lessee must within 30 days of receiving the application for a further lease grant or refuse to grant a further lease. A further lease must be granted for the same term as the lease or as agreed owners corporation. A further lease cannot be for less than 50 years. This is consistent with the requirement for a lease that is subject to a unit title application.

New subsection (3) provides that the further lease must authorise each use of the leased land and any building or structure on the land. The lease must also include any easement benefiting or burdening the land under the old lease. This is required because the planning and land authority cannot approve a sublease of land unless access to the land is made available (refer clause 92).

New subsection (4) provides that the new further lease commences on the day the old lease is surrendered or the day after the old lease expires. This is consistent with a further lease for a units plan created under a Crown lease.

New subsection (5) provides that if under new subsection (2) the further lease has a term that is shorter than the old lease that the Crown lessee cannot charge more than the cost of granting the further lease. This is consistent with a further lease for a units plan created under a Crown lease.

New subsection (6) provides that if a further lease is not granted that the Crown lessee must advise the owners corporation in writing and the corporation can take the matter to the ACT Civil and Administrative Tribunal (ACAT). The ACAT can direct the Crown lessee to grant a further lease on the terms it considers appropriate. The provision provides an important protection for unit owners.

If a further lease is still not granted the Crown lessee is liable for the cost of improvements on the land held under the declared land sublease. The *Land Titles Act 1925*, new section 88H (refer clause 57) provides for how the costs of improvements are determined.

New subsection (7) provides that if a further lease is granted the Crown lessee is not required to pay for improvements on the land.

New subsection (8) provides definitions for the section and includes *improvement, non-residential unit leases* and *old leases*.

Clause 127 Section 167A heading

The clause substitutes existing section 167A with Grant of further leases - generally. Existing section 167A is replaced with a new section 167A. Amendments to the section mean that

there is an efficient and streamlined process for an owners corporation to seek and manage an application for a further lease: for further leases under the *Planning and Development Act 2007*, section 254 and this Act for a units plan created under a *declared land sublease*.

Section 167A Grant of further leases

This section is extended to cover a units plan that subdivides land under a *declared land sublease*. New section 167AA (refer clause 126) provides a process for an owners corporation to manage an application to the Crown lessee.

The new section applies to a further lease under the *Planning and Development Act 2007*, section 254 and this Act new section 167AA.

New section (2) provides that the owners corporation must hold a general meeting and issue a notice about the meeting including a statement that an application for a further lease is being sought and that unit owners are required to supply the certificate of title of the unit to the registrar-general. The *Land Titles Act 1925* requires that the registrar-general can require a certificate of title to be produce before issuing a further lease.

The supply of the certificate of title to the registrar-general does not affect the ownership of the unit: the unit remains the property of the unit owner (including a *relevant interests* e.g. a mortgagee). *Relevant interest* is defined in the *Land Titles (Unit Titles) Act 1970* (refer clause 67).

New subsection (2) (c) (i) provides that the owners corporation must seek authority, at the general meeting by an ordinary resolution, that if a further lease is sought to notify the registrar-general in writing about the application. This is referred to as a *further lease notice*. The notice performs the role of alerting the registrar-general of the fact that certificates of title for the units plan will be sent in and also demonstrates that the owners corporation has been authorised by ordinary resolution to seek a further lease. The notice also performs an additional role of starting a timeframe, 28 days from the date the notice is given. This is related to new subsection (3) (b) and new subsection (4).

New subsection (2) (c) (ii) provides that the owners corporation must also be authorised at the general meeting to do anything necessary on the unit owners behalf to ensure the grant of a further lease.

The subsection has two notes that direct the reader to the *Unit Titles (Management) Act 2011*, sch 3, section 3.19 that sets out the requirements for evidence of resolutions of owners corporations. The second note provides that it is an offence to make a false or misleading statement under the *Criminal Code*, pt 3.4.

New subsection (3) provides the circumstances for new subsection (4) to apply. The circumstances require a further lease notice under (2) (c) (i) to be given to the registrar-general and applies a timeframe for unit owners to provide the registrar-general with certificate of title for the units. The timeframe is 28 days from the date of the further lease notice.

New subsection (4) provides, for the purposes of the Land Titles Act 1925, section 86 (5) that the certificate of title for a unit is taken to have been supplied if it has not been supplied by the end of the 28 day period.

New section 167B, Declared *land subleases* – surrender of leases in units without grant of further leases

The clause inserts new section 167B. New section 167B provides that, for a units plan created under a *declared land sublease*, the *owners* corporation, with written consent of the unit *owners*, may surrender the leases to the Crown lessee.

The amendment is related to the amendment at clause 57 that inserts a new section 88F. New section 88F in the *Land Titles Act 1925* that provides a sublease cannot be surrendered without the consent of the Crown lessee. This is appropriate as the Crown lessee is liable for the value of improvements on the sublease (refer clause 57 new section 88H).

Clause 128 Effects of lease expiry Section 168 (1) (c) and (2)

The clause inserts the words “(or, if the units plan subdivides a *parcel* of land under a *declared land sublease*, the Crown lessee) after the word “territory”. The effect of the amendment is to provide that the Crown lessee is liable to pay the unit *owners* the value of improvements on the land held under the *declared land sublease*.

The amendment operates the same as if the units plan was created under a Crown lease and the lease was surrendered to the Territory. The amendment is related to the amendment at clause 57 that inserts new section 88H in the *Land Titles Act 1925*. New section 88H provides that the Crown lessee determines the value of the improvements by using the formula in the *Planning and Development Act 2007*, section 295.

In this way a unit *owner* of a unit created under a *declared land sublease* and a unit *owner* of a unit created under a Crown lease are treated the same. The only difference is that the Crown lessee is liable for the value of improvements (not the Territory).

Clause 129 New section 168 (2A), (2B) and (2C)

The clause inserts new section 168 (2A), (2B) and (2C).

New section 168 (2A) provides that, for an amount worked out for subsection (1) (c), the Territory (under this Act) is taken to be the planning and land authority for the purposes of section 295 of the *Planning and Development Act 2007*. This is a technical amendment as the *Planning and Development Act 2007*, section 295 provides that the planning and land authority (not the Territory) works out the amount.

The second part of the amendment is to provide that for a units plan created under a *declared land sublease*, that the Territory (under this Act) is the Crown lessee for the purposes of section 295 of the *Planning and Development Act 2007*.

New section 168 (2B) provides that if, for a units plan created under a *declared land sublease*, the sublease ends and the *owners* corporation had not provided the Crown lessee with at least 6 month’s written notice of the intention not to seek a further sublease that new subsection (2C) applies.

New subsection 168 (2C) provides that the Crown lessee can deduct from the value of the improvements any expenditure reasonably incurred in subletting the land or part of the land under the expired leases.

The amendment is related to clause 57 that inserts new section 88H and 88I in the *Land Titles Act 1925*. New section 88H provides for how the value of improvements is determined. New section 88I provides that the *owners* corporation or *sublessee* may seek a review of the amount determined through the ACT Civil and Administrative Tribunal (ACAT). The ACAT can confirm the amount or make a decision substituting the amount.

Clause 130 Effect of termination of unit lease, Section 170 (2), note

The clause substitutes the existing *Note* with a new *Note*. The *Note* provides that the section does not apply to a lease surrendered under the *Planning and Development Act 2007*, section 254 or a lease under a units plan that subdivides land under a *declared land sublease* surrendered under s 167AA (see dict def *termination*). New section 167AA is inserted in the Act by clause 126.

Clause 131 New unit lease with unit entitlement, Section 172 (2), note

The clause substitutes the existing *Note* for a New *note*. The *Note* provides section does not apply to a further lease, or a further lease under a units plan that subdivides land under a *declared land sublease*, granted after a lease has been surrendered under the *Planning and Development Act 2007*, s254 or s 167AA (see dict, def *termination*). New section 167AA is inserted in the Act by clause 126.

Clause 132 Dictionary, new definitions

The clause inserts new definitions in the dictionary. *Crown lease* means a Crown lease as defined in the *Land Titles Act 1925*. The Land Titles Act defines a Crown lease as a territory lease and includes a lease granted by the Commonwealth or the Federal Capital Commission.

Crown lessee, in relation to a *declared land sublease*, means the lessee under the *Crown lease* under which the sublease is granted.

A *declared land sublease* means a sublease of land *declared* under the *Planning and Development Act 2007*, section 312B. New section 312B is inserted by cause 94 that amends the *Planning and Development Act 2007*.

Clause 133 Dictionary, definition of *interest*

The clause defines the definition of *interest*. *Interest* means a legal or equitable interest in the lease of the unit or common property, including the Crown lessee of land under a *declared land sublease* but does not include interest in a sublease of a unit.

A *declared land sublease* means a sublease of land *declared* under the *Planning and Development Act 2007*, section 312B. New section 312B is inserted by cause 94 that amends the *Planning and Development Act 2007*.

Clause 134 Dictionary, definitions of *lease* and *termination*

The clause inserts new definitions for *lease* and *termination*. A *lease*, for a unit, the lease under which the units plan was created. The existing definition is expanded to include a units plan created under a *declared land sublease*.

The clause substitutes the existing definition of *termination*. *Termination* of a lease of a unit does not include the termination of the lease on surrender under the *Planning and Development Act 2007*, section 254 (Grant of further leases) or for leases under a units plan that subdivides land under a *declared land sublease* – section 167AA (refer clause 126). A *declared land sublease* means a sublease of land *declared* under the *Planning and Development Act 2007*, section 312B. New section 312B is inserted by cause 94 that amends the *Planning and Development Act 2007*.

Part 20 Unit Titles (Management) Act 2011

Clause 135 Corporate register – information to be included, new section 114 (2) (c)

The clause inserts a new section 114 (2) (c). New section 114 (2) (c) provides that the full name and address of the Crown lessee for a *parcel* of land subdivided by a units plan created under a *declared a land sublease* must to be included on the Corporate register.

The effect of the amendment is to ensure that the Corporate register notes the interests of the Crown lease in the units plan created under a *declared land sublease*. This is a similar requirement under the *Land Titles Act 1925*.

Clause 136 Corporate register – provision of information, Section 115 (1) (a)

The clause omits the word “agreeing” and substitutes it with the words “entering into an agreement”. The amendment is a technical amendment. The section currently requires the *owner* to tell the *owners* corporation about agreeing to a transfer. However, the act of ‘agreeing’ does not obligate the *owner* to complete the transactions. Whereas an *owner* who has entered into an agreement about the transfer is obligated under the terms of the agreement to complete the transfer (otherwise penalties may apply).

The amendment does not otherwise change the operation of the provision.

Clause 137 New section 115 (2A)

The clause inserts a new section 115 (2A). New section 115 (2A) creates a new obligation on a Crown lessee who had consented to a building on the *declared land sublease* to be unit titled. The Crown lessee must give the *owners* corporation for the units plan written notice when entering into an agreement to transfer their interest in the Crown lease and when the transfer registered. The Crown lessee must also give the *owners* corporation notice about a change of address or a change of name.

The effect of the amendment is to require the Crown lessee to advise pertinent information to the *owners* corporation so that the corporation can understand matters relative to the Crown lease under which the units plan was created.

Clause 138 Dictionary, new definition of *declared land sublease*

The clause inserts a new definition of *declared land sublease*. The definition provides that that declare *land sublease* takes on the meaning as defined in the *Planning and Development Act 2007*, new section 312C (refer cause 94).

A *declared land sublease* is a sublease of land granted under a *declared Crown lease* (see new section 312B).

Part 21 Unit Titles Regulation 2001

Clause 139 Unit title assessment report application – Act, s 22B (2), New section 2B (a) (iii)

The clause inserts a new section 2B (a) (iii). New section 2B (a) (iii) to provide that if the *parcel* is land under a *declared land sublease* the sublease plan number must be included in the application.

The effect of the amendment is to ensure that identifying detail, for the *declared land subleased*, is included in an application. The amendment does not otherwise affect the operation of the provision.

Clause 140 Unit title assessment report – contents – Act, s 22B (5) (a), New section 2D (1) (ba)

The clause inserts a new section 2D (1) (ba). New section 2D (1) (ba) provides that if the *parcel* is land under a *declared land sublease* the sublease plan number must be included in the report.

The effect of the amendment is to ensure that identifying detail, for the *declared land subleased*, is included in the report. The amendment does not otherwise affect the operation of the provision.

Clause 141 Unit title assessment report – accompanying material – Act, s 22B (5) (b), new section 2E (1) (ka)

The clause inserts a new section 2E (1) (ka). New section 2E (1) (ka) provides that if the lease is a *declared land sublease* then a plan showing the location of utility services and easements on the land, of benefit or burden be shown.

Clause 142 Boundary diagrams, New section 6 (1) (aa)

The clause inserts a new section 6 (1) (aa). New section 6 (1) (aa) provides that if the *parcel* is held under a *declared land sublease* that a boundary diagram must show the boundaries of the Crown lease and the land held under the *declared a land sublease*.

Clause 143 Endorsement of units plans – Act, s 27 (2), Section 9 (2)

The clause substitutes the existing section 9 (2). Revised section (9) (2) provides that the documents for a units plan must be signed by the lessee of the *parcel* and if the *parcel* is land under a *declared land sublease* the documents for the units plan must also be signed by the Crown lessee.

The amendment is related to amendments at clause 122 that provides that if an application for unit title is about land held under a *declared land sublease* the Crown lessee consent is required.

Clause 144 Dictionary, note 3

The clause inserts at *Note 3 Crown lessee* and *declared land sublease in the dictionary*. *Note 3* provides that the terms used in the regulation have the same meaning that they have in the *Unit Titles Act 2001*, (see *Legislation Act 2001*, section 148). The *Note* provides examples of terms. *Declared land sublease* and *Crown lessee* are included in the examples provided.

Clause 132 inserts in the *Unit Titles Act 2001*, dictionary a definition for *Crown lessee*. The definition provides for land held under a *declared land sublease* the *Crown Lessee* is the lessee of the Crown lease that grants the *declared land sublease*. The clause also inserts a definition for *declared land sublease* and provides that a *declared land sublease* is a sublease of land *declared* under the *Planning and Development Act 2007*, new section 312B (refer cause 94)

Part 22 Utilities Act 2000

Clause 145 Water supply and sewerage services – owner’s liability for payment, Section 94 (6), definition of owner, new paragraph (e)

The clause inserts a new paragraph (e) to define the *owner* for land held under a *land sublease* as the *sublessee*. The amendment does not otherwise change the operation of the provision.

The new definition for *owner* of land includes a lessee and for land under a *land sublease* the *owner* means the *sublessee*. The definition is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Environment Protection Regulation 2005*, *Land Tax Act 2004*, *Planning and Development Regulation 2008*, *Public Unleased Land Act 2013*, *Water and Sewerage Act 2000* and *Water Resources Act 2007*.

The amendment is related to amendments at clause 92 of the *Planning and Development Act 2007* that provide that the planning and land authority must not consent to the sublease of land unless satisfied that the subleased is capable of utility services being connected to the boundary of the subleased land. Clause 103 new section 221 (g) provides that a written statement from the utility provider and plans must be included in an application for sublease of land.

Clause 146 Dictionary, new definition of land sublease

The clause inserts a new definition of *land sublease*. The definition provides that *land sublease* is defined in the *Planning and Development Act 2007*, dictionary. Clause 97 inserts a new definition of *land sublease* in the dictionary. A *land sublease* is defined as a sublease of land approved under section 308 of the Act.

The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*,

Land Tax Act 2004, Land Titles Act 1925, Leases (Commercial and Retail) Act 2001, Planning and Development Act 2007, Public Unleased Land Act 2013, Water and Sewerage Act 2000 and Water Resources Act 2007.

Clause 147 Dictionary, definition of *owner*

The clause substitutes the existing definition of *owner*. An *owner* is the lessee, *sublessee* or unit title *owner* for land granted by or for the Commonwealth and whether alone or together with 1 or more other people.

The new definition for *owner* of land includes a lessee and for land under a *land sublease* the *owner* means the *sublessee*. The definition is consistent with the proposed amendments to insert the definition in the *Building Act 2004, Environment Protection Regulation 2005, Land Tax Act 2004, Planning and Development Regulation 2008, Public Unleased Land Act 2013, Water and Sewerage Act 2000 and Water Resources Act 2007.*

Part 23 *Water and Sewerage Act 2000*

Clause 148 Dictionary, new definition of *land sublease*

The clause inserts a new definition for *land sublease*. The definition provides that *land sublease* is defined in the *Planning and Development Act 2007*, dictionary. Clause 97 inserts a new definition of *land sublease* in the dictionary. A *land sublease* is defined as a sublease of land approved under section 308 of the Act.

The definition of *land sublease* is consistent with the proposed amendments to insert the definition in the *Building Act 2004, Common Boundaries Act 1981, Duties Act 1999, Environment Protection Act 1997, First Home Owners Grant Act 2000, Land Tax Act 2004, Land Titles Act 1925, Leases (Commercial and Retail) Act 2001, Planning and Development Act 2007, Public Unleased Land Act 2013, Utilities Act 2000 and Water Resources Act 2007.*

The amendment is related to amendments at clause 92 of the *Planning and Development Act 2007* that provide that the planning and land authority must not consent to the sublease of land unless satisfied that the subleased is capable of utility services being connected to the boundary of the subleased land. Clause 103 new section 221 (g) provides that a written statement from the utility provider and plans must be included in an application for sublease of land.

Clause 149 Dictionary, definition of *owner*

The clause inserts a new definition for *owner*. An *owner* is defined as the *owner* of premises or land on which sewerage or water service has been or is to be installed, includes the occupier, lessee, tenant or holder of the premises or, for land under a *land sublease*, the *sublessee*.

Part 24 *Water and Sewerage Regulation 2001*

Clause 150 Dictionary, note 4

The clause inserts two new examples for the *Note 4*. *Note 4* provides that the terms used in the regulation have the same meaning as they do in the Act. The new examples are for *land*

sublease and *owner*. Clause 148 and 149 inserts a definition for *land sublease* and *owner* for the *Water and Sewerage Act 2000*. The definition for *land sublease* provides that *land sublease* is defined in the *Planning and Development Act 2007*, dictionary. Clause 97 inserts a new definition of *land sublease* in the dictionary. A *land sublease* is defined as a sublease of land approved under section 308 of the Act.

The definition of *owner*, for the Act, is defined as the *owner* of premises or land on which sewerage or water service has been or is to be installed, includes the occupier, lessee, tenant or holder of the premises or, for land under a *land sublease*, the *sublessee*.

Clause 151 Dictionary, new definition of *parcel*

The clause inserts a definition of *parcel*. A *parcel* is a *parcel* of land under a Crown lease including part of the *parcel* held under a *land sublease*.

Part 25 *Water Resources Act 2007*

Clause 152 Dictionary, new definition of *land sublease*

The clause inserts a new definition of *land sublease*. The definition provides that *land sublease* is defined in the *Planning and Development Act 2007*, dictionary. Clause 97 inserts a new definition of *land sublease* in the dictionary. A *land sublease* is defined as a sublease of land approved under section 308 of the Act.

The definition of *land sublease* is consistent with the proposed amendments to the definition in the *Building Act 2004*, *Common Boundaries Act 1981*, *Community Title Act 2001*, *Duties Act 1999*, *Environment Protection Act 1997*, *First Home Owners Grant Act 2000*, *Land Tax Act 2004*, *Land Titles Act 1925*, *Leases (Commercial and Retail) Act 2001*, *Planning and Development Act 2007*, *Public Unleased Land Act 2013*, *Rates Act 2004*, *Utilities Act 2000* and *Water and Sewerage Act 2000*.

The amendment is related to amendments at clause 92 of the *Planning and Development Act 2007* that provide that the planning and land authority must not consent to the sublease of land unless satisfied that the subleased is capable of utility services being connected to the boundary of the subleased land. Clause 103 new section 221 (g) provides that a written statement from the utility provider and plans must be included in an application for sublease of land.

Clause 153 Dictionary, definition of *owner*

The clause inserts a definition for *owner*. The definition of *owner* is defined as the lessee or for land held under a *land sublease* the *sublessee*.

The new definition for *owner* of land includes a lessee and for land under a *land sublease* the *owner* means the *sublessee*. The definition is consistent with the proposed amendments to the definition in the *Building Act 2004*, *Environment Protection Regulation 2005*, *Land Tax Act 2004*, *Planning and Development Regulation 2008*, *Public Unleased Land Act 2013*, *Rates Act 2004*, *Utilities Act 2000* and *Water and Sewerage Act 2000*. This is a consequential amendment.