

2004

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT) AMENDMENT BILL 2004 (NO 2)

EXPLANATORY STATEMENT

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

Land (Planning and Environment) Amendment Bill 2004 (No 2)

Background

On 9 December 2003 the Minister for Planning gave the ACT Planning and Land Authority a Statement of Planning Intent under section 14 of the *Planning and Land Act 2002*. That Statement included a requirement for legislative and systems reform to include measures to discourage speculation in land. This Bill gives effect to the policy statement and also provides for the inclusion of provisions that will enable consent to be given on the grounds of personal or financial hardship, which is not adequately dealt with under the existing provisions.

Outline

Section 180 of the Act specifies the circumstances in which land may be assigned or transferred, including where the Authority is required to consent to the transfer. This Bill deals with the consent to transfer provisions, which only affect lessees who have failed to comply with the building and development provisions in their lease. That is, the lessee has not been issued a certificate of compliance under section 179 of the *Land (Planning and Environment) Act 1991*.

This Bill specifies the circumstances in which a lessee is able to apply the planning and land authority for consent to transfer their lease. The Bill also amends Section 178, which relates to refund on surrender or termination of a lease. The current provisions only deal with original lessees, and the proposed amendments specify refund amounts as prescribed by regulation, which enables both original and subsequent lessees to be potentially eligible for a refund, subject to meeting any criteria specified in a disallowable instrument under section 178.

Notes on Clauses

Clauses 1 – 3 are administrative clauses, which deal with the name, commencement and amended Act details. The Act commences on a day fixed by the Minister, and amends the *Land (Planning and Environment) Act 1991* (The Land Act).

Clause 4 amends section 178 of the Land Act to enable the planning and land authority to authorise a payment on surrender or termination of a lease of Territory land. The payment amount is prescribed by regulation. This replaces the existing provision that only enables a refund payment to be made where the lessee who is surrendering the lease or is the lessee at the time of termination, is

the original lessee who paid the Territory for the lease. A note to the clause explains that a fee may be determined for the subsection. The authority must not authorise a payment unless the application meets any criteria determined by the Minister and specified in a disallowable instrument under 178(4).

Clause 5 amends section 180 of the Land Act by substituting a new subsection (2) and inserting a new subsection (2A). Subsection (2) stipulates that the planning and land authority may consent to a legal or equitable assignment or transfer of a lease if the authority is satisfied that certain circumstances exist. The authority must be satisfied that the proposed lessee intends to comply with the building and development provisions of the lease, and has given any security required by the authority for that compliance. In addition to those circumstances, the authority must be satisfied that one of the two following circumstances apply:

- That the lessee is unable for personal or financial reasons to comply with the building and development provision of the lease: or
- The lessee has a contract with the proposed transferee to build a home on the lease land.

The new subsection (2A) enables the planning and land authority to consent to a transfer in another specified circumstance, which is the first transfer of an individual lease of undeveloped land by the person who provided the infrastructure on, and subdivided, the holding of which the individual lease is a subdivision. This covers transfers from a private land developer who has a holding lease of a large parcel of land, and is responsible for the servicing and subdivision of the land. These first transfers are part of the normal land development process, and the building and development provisions of the lease are not a relevant consideration in the first transfer of such leases.

Notes to the section 180 amendments explain that a fee may be determined for subsection (2) and (2A).

Clause 6 amends subsection 180(3) to take account of the new subsection (2A). The planning and land authority, in deciding whether to consent to an assignment or transfer of a lease under subsection (2) or (2A), shall take into consideration any matters determined by the Minister, in writing, for section 180.

Clause 7 provides for the subsections in section 180 to be renumbered when the Land Act is next published.

Clause 8 provides for a new regulation 14A, which prescribes the amount payable to a lessee on surrender or termination of a lease. 14A(1) provides that on surrender or termination, where it is determined that a payment can be authorised, the amount paid is to be the amount paid for the transfer or grant of the lease or the market value, whichever is the lesser. However, if the lessee is

the original lessee of a lease granted before the commencement of the regulations, the payment is the price paid for the grant of the lease. 14(2) preserves the rights of existing lessees under section 178. Subregulation provides for 14(2) to expire seven years after its commencement.