

2003

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Planning)

# Land (Planning and Environment) (Compliance) Amendment Bill 2003

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(As presented)

(Minister for Planning)

# **Land (Planning and Environment) (Compliance) Amendment Bill 2003**

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## **A Bill for**

An Act to amend the *Land (Planning and Environment) Act 1991*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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Section 1

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**1 Part 1 Preliminary**

**2 1 Name of Act**

This Act is the *Land (Planning and Environment) (Compliance) Amendment Act 2003*.

**5 2 Commencement**

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

**1      Part 2****Land (Planning and  
Environment) Act 1991****3      Act amended—pt 2**

4      This part and schedule 2 amend the *Land (Planning and*  
5      *Environment) Act 1991.*

6      *Note*      Additional amendments are included in sch 1.

**7      4      Licences****8      Section 210 (1), new example and note**

9      *insert*

**10     Example of when a licence might be given to a person**

11     To allow a building (including a fitting attached to the building) owned or  
12     occupied by the person to encroach onto, over or under an area of unleased public  
13     land.

14     *Note*      An example is part of the Act, is not exhaustive and may extend, but  
15     does not limit, the meaning of the provision in which it appears (see  
16     Legislation Act, s 126 and s 132).

**17     5      New section 210 (4)**

18     *insert*

- 19     (4) A person is not required to hold a licence under this section to  
20     occupy or use an area of unleased public land if—  
21        (a) the person holds a permit under the *Roads and Public Places*  
22        *Act 1937* to place an object in, over or across the area; and  
23        (b) the area is being occupied or used in accordance with the  
24        permit; and

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- 1                   (c) for an occupation or use that requires an approval under  
2                   division 6.2 (Approvals)—  
3                   (i) the occupation or use has been approved under that  
4                   division; and  
5                   (ii) the person is complying with any conditions under  
6                   section 245 (Conditional approvals) that apply to the  
7                   approval.

**6                   Licences in respect of land that is not public land**  
**Section 217 (1), new example and note**

10                  *insert*

**Example of when a licence might be given to a person**

11                  To allow a building (including a fitting attached to the building) owned or  
12                  occupied by the person to encroach onto, over or under an area of unleased  
13                  Territory land that is not public land.

14                  *Note*       An example is part of the Act, is not exhaustive and may extend, but  
15                  does not limit, the meaning of the provision in which it appears (see  
16                  Legislation Act, s 126 and s 132).

**7                   New section 217 (5)**

19                  *insert*

- 20                  (5) A person is not required to hold a licence under this section to  
21                  occupy or use an area of unleased Territory land that is not public  
22                  land if—  
23                   (a) the person holds a permit under the *Roads and Public Places*  
24                   *Act 1937* to place an object in, over or across the area; and  
25                   (b) the area is being occupied or used in accordance with the  
26                   permit; and

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- 1                   (c) for an occupation or use that requires an approval under  
2 division 6.2 (Approvals)—  
3                   (i) the occupation or use has been approved under that  
4 division; and  
5                   (ii) the person is complying with any conditions under  
6 section 245 (Conditional approvals) that apply to the  
7 approval.

**8     Division 6.3**

9                   *substitute*

**10    Division 6.3                   Orders****11    Subdivision 6.3.1           Making of orders****12    254 Applications to planning and land authority for orders**

- 13                   (1) A person may apply to the planning and land authority for an order  
14 directed to 1 or more of the following:  
15                   (a) the lessee or occupier of a place where a controlled activity  
16 was, is being, or is to be, conducted;  
17                   (b) anyone by whom or on whose behalf a controlled activity was,  
18 is being, or is to be, conducted.  
19                   (2) The application must state—  
20                   (a) the matter about which the order is sought; and  
21                   (b) the kind of order sought by the person; and  
22                   (c) each person to whom the order sought is to be directed; and  
23                   (d) the place in relation to which the order is sought; and

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- (e) the grounds on which the order is sought.

*Note* If a form is approved under s 287A (Approved forms) for an application, the form must be used.

- (3) The planning and land authority must give written notice of the application to—

  - (a) each person to whom the order sought is to be directed; and
  - (b) if different from the person or people mentioned in paragraph (a)—the lessee or occupier of the place in relation to which the order is sought; and
  - (c) if the order sought relates to the control of a pest animal or plant—the conservator; and
  - (d) if the order sought relates to the pruning of a significant tree under the *Tree Protection (Interim Scheme) Act 2001*—the conservator; and

15 Note For restrictions on pruning etc a significant tree, see *Tree  
16 Protection (Interim Scheme) Act 2001*, s 10.

- (e) if the order sought relates to the parking of a heavy vehicle on residential land under the *Road Transport (Safety and Traffic Management) Regulations 2000*, division 3.1.3—the road transport authority.

**21**      *Note*    For how documents may be given, see Legislation Act, pt 19.5.

- 22 (4) The notice must—

- 23                   (a) be accompanied by a copy of the application; and

24                   (b) contain a statement to the effect that the person to whom it is

25                   given may, within 7 days after the day the person is given the

26                   notice, make a submission to the planning and land authority

27                   about the making of the order.

- 28 (5) The notice may also include any other information that the planning  
29 and land authority considers appropriate.

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**254A Decision on application to planning and land authority for order**

- (1) Before deciding whether to make an order on an application under section 254, the planning and land authority must consider any submission made by a person within 7 days after the day the person was given notice of the application under that section.
- (2) The planning and land authority may decide—
  - (a) to make an order of the kind sought; or
  - (b) to make an order (including a different kind of order) that is not more onerous than the order sought; or
  - (c) not to make an order.

**Example of less onerous order—par (b)**

A person applies for an order for the demolition of an unapproved structure but the planning and land authority makes an order that a development application be lodged for the structure within a stated period and, if the application is not lodged within that period or is not approved, the structure is to be demolished.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) An order may be directed to 1 or more of the following:
  - (a) the person against whom the order is sought to be directed;
  - (b) if the planning and land authority considers that the order would be more appropriately directed to someone else mentioned in section 254 (3) (a) or (b)—that person.
- (4) The planning and land authority is to be taken to have refused to make the order applied for under section 254 (Applications to planning and land authority for orders) if the authority fails to decide the application before the end of the period prescribed under the regulations.

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- 1       (5) The planning and land authority must refuse to make an order about  
2       the use or management of land in a way that fails to control a pest  
3       animal or plant if—
  - 4           (a) there is a written agreement between the lessee or occupier of  
5           the land and the Environment Minister about control of the  
6           propagation of the pest animal or plant; and
  - 7           (b) the authority is satisfied that the lessee or occupier is giving  
8           effect to the agreement.

9       **255 Proposed orders on planning and land authority's own  
10      initiative**

- 11      (1) This section applies if the planning and land authority proposes, on  
12      the authority's own initiative, to make an order (the *proposed order*)  
13      directed to 1 or more of the following:
  - 14           (a) the lessee or occupier of a place where a controlled activity  
15           was, is being, or is to be, conducted;
  - 16           (b) anyone by whom or on whose behalf a controlled activity was,  
17           is being, or is to be, conducted.
- 18      (2) The planning and land authority must give written notice of the  
19      proposed order to—
  - 20           (a) each person to whom the proposed order is directed; and
  - 21           (b) if different from the person or people mentioned in  
22           paragraph (a)—the lessee or occupier of the place in relation to  
23           which the proposed order is to apply; and
  - 24           (c) if the proposed order relates to the control of a pest animal or  
25           plant—the conservator; and

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- 1                   (d) if the proposed order relates to the pruning of a significant tree  
2                   under the *Tree Protection (Interim Scheme) Act 2001*—the  
3                   conservator; and

4                  *Note*       For restrictions on pruning etc a significant tree, see *Tree*  
5                  *Protection (Interim Scheme) Act 2001*, s 10.

- 6                   (e) if the proposed order relates to the parking of a heavy vehicle  
7                   on residential land under the *Road Transport (Safety and*  
8                   *Traffic Management) Regulations 2000*, division 3.1.3—the  
9                   road transport authority.

10                 *Note*      For how documents may be given, see Legislation Act, pt 19.5.

11                 (3) The notice must state—

- 12                 (a) each person to whom the proposed order is directed; and  
13                 (b) the terms of the proposed order and the place in relation to  
14                   which it is to apply; and  
15                 (c) the grounds for making the proposed order; and  
16                 (d) when the proposed order will take effect; and  
17                 (e) if appropriate—  
18                   (i) the period for compliance with the proposed order; and  
19                   (ii) when the proposed order will end (including, for  
20                   example, on the happening of an event stated in the  
21                   order).

22                 *Note*      An example is part of the Act, is not exhaustive and may extend, but  
23                   does not limit, the meaning of the provision in which it appears (see  
24                   Legislation Act, s 126 and s 132).

25                 (4) Also, the notice must contain a statement to the effect that the  
26                   person to whom it is given may, within 7 days after the day the  
27                   person receives the notice, make a submission to the planning and  
28                   land authority about the making of the proposed order.

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## **255A Decision on proposed order on planning and land authority's own initiative**

- 5       (1) Before deciding whether to make the proposed order mentioned in  
6           section 255, the planning and land authority must consider any  
7           submission made by a person within 7 days after the day the person  
8           was given notice of the proposed order under section 255 (2).

9       (2) The planning and land authority may decide—  
10           (a) to make the proposed order; or  
11           (b) to make an order (including a different kind of order) that is  
12           not more onerous than the proposed order; or  
13           (c) not to make the proposed order.

#### **Example of less onerous order—par (b)**

15 An order that requires the doing of an act within a period longer than that stated in  
16 the proposed order.

17            *Note*     An example is part of the Act, is not exhaustive and may extend, but  
18            does not limit, the meaning of the provision in which it appears (see  
19            Legislation Act, s 126 and s 132).

- 20 (3) An order may be directed to 1 or more of the following:

21 (a) the person against whom the proposed order is directed; or

22 (b) if the planning and land authority considers that the order  
23 would be more appropriately directed to someone else  
24 mentioned in section 255 (2) (a) or (b)—that person.

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- 1           **256 Making of orders on Executive's own initiative**
- 2       (1) The Executive may, on its own initiative, make an order directed to  
3       1 or more of the following:
- 4           (a) the lessee or occupier of a place where a controlled activity  
5           was, is being, or is to be, conducted;
- 6           (b) anyone by whom or on whose behalf the activity was, is being,  
7           or is to be, conducted.
- 8       (2) The Minister must present a copy of an order under subsection (1) to  
9       the Legislative Assembly within 3 sitting days after the day the  
10      Executive makes it.
- 11      (3) An order under subsection (1) is a notifiable instrument.
- 12      *Note*     A notifiable instrument must be notified under the Legislation Act.
- 13           **257 Content of orders**
- 14       (1) An order must state—
- 15           (a) that it is an order under this Act made by the Executive or the  
16           planning and land authority (as appropriate); and
- 17           (b) each person to whom the order is directed; and
- 18           (c) anyone else who is bound by the order (see section 257B); and
- 19           (d) the terms of the order and the place in relation to which the  
20           order applies; and
- 21           (e) the grounds on which the order is made; and
- 22           (f) when the order takes effect; and
- 23           (g) if appropriate—
- 24                  (i) the period for compliance with the order; and

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- (ii) when the order ends (including, for example, on the happening of an event stated in the order).

**Note** An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) An order must also contain a statement to the effect that the order operates until it is revoked or ends in accordance with the order.
  - (3) An order may direct anyone to whom it is directed—
    - (a) not to begin a development without approval; or
    - (b) to stop carrying out a development without approval; or
    - (c) to stop, or not begin, a controlled activity other than a development; or
    - (d) to comply with the terms of an approval to undertake a development; or
    - (e) to stop carrying out a development other than in accordance with the conditions under which an approval to carry out the development was given; or
    - (f) to demolish a building or structure, or a part of a building or structure, that has been constructed or erected without approval or permission required under a Territory law; or
    - (g) to demolish a building or structure, or a part of a building or structure, that encroaches onto, over or under unleased Territory land without approval granted under a Territory law; or
    - (h) to restore any land, building or structure that has been altered without approval or permission required under a Territory law; or
    - (i) to replace with an identical building or structure any building or structure that has been demolished without approval or permission required under a Territory law; or

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## **21 257A Notice of making of orders**

If the Executive or the planning and land authority makes an order, the Executive or the authority must give notice of the making of the order to the following:

- 25                   (a) each person to whom the order is directed;

26                   (b) the applicant (if any) for the order;

27                   (c) the lessee or occupier of the place in relation to which the order

28                   applies;

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- 1       (d) the registrar-general;
  - 2       (e) if the order relates to the control of a pest animal or plant—the
  - 3            conservator;
  - 4       (f) if the order relates to the pruning of a significant tree under the
  - 5            *Tree Protection (Interim Scheme) Act 2001*—the conservator;
  - 6            and
  - 7       (g) if the order relates to the parking of a heavy vehicle on
  - 8            residential land under the *Road Transport (Safety and Traffic*
  - 9            *Management) Regulations 2000*, division 3.1.3—the road
  - 10          transport authority;
  - 11      (h) anyone else whose interests the Executive or the authority
  - 12          believe are adversely affected by the order.

**13**      *Note*    For how documents may be given, see Legislation Act, pt 19.5.

## **257B Who is bound by an order?**

- 15 (1) An order binds each person to whom it is directed.

16 (2) If an order binds the lessee of the place to which the order applies,  
17 the order also binds anyone who becomes the lessee of the place  
18 after the order is made (a ***future lessee***) to the same extent as if the  
19 order had been directed to that person.

20 (3) If an order binds the occupier of the place to which the order  
21 applies, the order also binds anyone who becomes an occupier of the  
22 place after the order is made (a ***future occupier***) to the same extent  
23 as if the order had been directed to that person.

24 (4) However, subsection (2) or (3) does not apply to an order if the  
25 order states that it does not bind a future lessee or a future occupier  
26 (as appropriate) of the lease.

**1 258 Contravening orders**

- 2 (1) A person commits an offence if—  
3     (a) the Executive or the planning and land authority makes an  
4         order directed to the person; and  
5     (b) the order requires the person to do, or not do, something stated  
6         in the order; and  
7     (c) the person is given notice of the making of the order (whether  
8         by being given a copy of the order or otherwise); and  
9     (d) the person contravenes the order.

10 Maximum penalty: the amount stated in schedule 5, column 3 in  
11 relation to the activity for which the order was made.

12 *Note* A Territory authority is not liable to be prosecuted for an offence  
13 against this section (see Legislation Act, s 121).

- 14 (2) An offence against this section is a strict liability offence.

**15 258A Ending of orders**

- 16 (1) An order operates until it is revoked or ends in accordance with the  
17 order.  
18 (2) A person who is bound by an order may, in writing, apply to the  
19 Executive or the planning and land authority (as appropriate) for the  
20 revocation of the order.  
21 (3) The application must state the grounds on which the revocation of  
22 the order is sought.  
23 (4) The Executive or the planning and land authority may revoke the  
24 order if satisfied, on reasonable grounds, that the order is no longer  
25 necessary or appropriate.

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**258B Notice of ending of orders**

- (1) If an order ends otherwise than by being revoked, the Executive or the planning and land authority must give written notice of the ending of the order to the registrar-general.
- (2) If the Executive or the planning and land authority revokes an order, the Executive or authority must give written notice of the revocation to—
  - (a) each person to whom the order was directed; and
  - (b) if different from the person or people mentioned in paragraph (a)—the lessee or occupier of the place in relation to which the order applied; and
  - (c) the registrar-general.

**258C Effect of orders about pest animals or plants**

- (1) This section applies if an order relates to the control of a pest animal or plant.
- (2) A person to whom the order is directed is not required to hold a licence under the *Nature Conservation Act 1980* for any action required to comply with the order in relation to the pest animal or plant.

**Subdivision 6.3.2 Rectification work**

**259 Definitions for sdiv 6.3.2**

In this subdivision:

**authorised person**—see section 259B (1).

**rectification work** means—

- (a) work in relation to a place where a controlled activity is being conducted to ensure compliance with the approval for the activity; or

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- 1                   (b) the conduct of an activity required under an order that was not  
2                   carried out within the period stated in the order.

3                   **259A Direction to carry out rectification work**

- 4                   (1) The Executive or the planning and land authority may direct 1 or  
5                   more of the following to carry out rectification work in relation to a  
6                   controlled activity:
- 7                   (a) the lessee or occupier of a place where the activity was or is  
8                   being conducted;
- 9                   (b) anyone by whom or on whose behalf the activity was or is  
10                  being conducted.
- 11                  (2) The Executive or the planning and land authority must give notice  
12                  of the direction to—
- 13                  (a) the person who is required to comply with the direction; and
- 14                  (b) if different from the person mentioned in paragraph (a)—the  
15                  lessee or occupier of the place to which the direction applies.

16                  *Note*       For how documents may be given, see Legislation Act, pt 19.5.

- 17                  (3) The notice must state—
- 18                  (a) that it is a direction under this Act made by the Executive or  
19                  the planning and land authority (as appropriate); and
- 20                  (b) the person who is required to comply with the direction; and
- 21                  (c) the place in relation to which the direction applies; and
- 22                  (d) the rectification work required; and
- 23                  (e) the grounds on which the direction is made; and
- 24                  (f) that the rectification work must be completed within 7 days  
25                  after the day the notice is given to the person or any longer  
26                  period stated in the notice.

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- 1       (4) The notice must also contain a statement to the effect that, if the  
2           rectification work is not completed within the period required by the  
3           notice—
  - 4           (a) the Executive or the planning and land authority may authorise  
5              someone else to carry out the work; and
  - 6           (b) the reasonable cost of carrying out the work is a debt to the  
7              Territory by the person who is required to comply with the  
8              direction.
- 9       (5) This section applies whether or not a proceeding for an offence  
10      against this part has been begun or is about to begin.

**11 259B Authorisation to carry out rectification work**

- 12      (1) The Executive or the planning and land authority may authorise a  
13           person (an *authorised person*) to enter the place to which a direction  
14           under section 259A applies to carry out the rectification work  
15           required by the notice under that section if the work is not  
16           completed within the period required by the notice.
- 17      (2) However, the planning and land authority must not give the  
18           authorisation—
  - 19           (a) until the end of the period within which an application may be  
20              made to the administrative appeals tribunal for the review of  
21              the decision to make the order to which the rectification work  
22              relates; or
  - 23           (b) if an application is made to the administrative appeals tribunal  
24              for a review of the decision—unless the decision is upheld or  
25              the application is withdrawn.
- 26      (3) The authorised person must carry out the rectification work in  
27           accordance with the directions of an inspector.

**Section 8****1 259C Obstructing etc authorised people**

- 2 (1) A person commits an offence if—  
3     (a) the person knows that, or is reckless about the fact that, a  
4         person is an authorised person; and  
5     (b) the person obstructs, hinders, intimidates or resists the  
6         authorised person in the exercise of the person's functions.  
7     Maximum penalty: 50 penalty units, imprisonment for 6 months or  
8         both.
- 9 (2) Strict liability applies to subsection (1) (b).

**10 259D Liability for cost of rectification work**

11     The person who is required to comply with a direction under  
12         section 259A (Direction to carry out rectification work) must pay to  
13         the Territory the reasonable cost of any rectification work carried  
14         out by an authorised person to which the direction related.

15     *Note*     An amount owing under a law may be recovered as a debt in a court of  
16         competent jurisdiction (see Legislation Act, s 177).

**17 259E Determination of criteria for deferral of rectification work  
18 cost**

- 19 (1) The Executive or the planning and land authority may, in writing,  
20         determine circumstances when the payment of all or part of the cost  
21         of rectification work carried out by an authorised person on a  
22         lessee's leasehold may be deferred by the lessee.
- 23 (2) A determination under subsection (1) is a notifiable instrument.

24     *Note*     A notifiable instrument must be notified under the Legislation Act.

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**259F Application for deferral of rectification work cost**

- (1) A lessee who is required to pay the cost of rectification work carried out on the lessee's leasehold may, in writing, apply to the Executive or the planning and land authority (as appropriate) for the deferment of payment of all or part of the cost of the rectification work.
- (2) The application must state the grounds for the application.

*Note* If a form is approved under s 287A (Approved forms) for an application, the form must be used.

**259G Deferral of rectification work cost**

- (1) The Executive or the planning and land authority may, in writing, declare that all or part of the cost of rectification work payable by a lessee is deferred if satisfied that a circumstance determined under section 259E (1) applies to the lessee.

*Note* Interest is payable on the deferred amount, see s 259H.

- (2) The declaration must state—
- (a) the leasehold to which the declaration relates; and
- (b) the amount of the cost of the rectification work deferred.

**259H Security for deferred rectification work cost**

- (1) The Executive or the planning and land authority must—
- (a) lodge a copy of a declaration under section 259G with the registrar-general for registration under the *Land Titles Act 1925*; and
- (b) give a copy of the declaration to the lessee of the leasehold to which the declaration relates and anyone else who has an interest in the leasehold.
- (2) For the *Land Titles Act 1925*, section 104 (1) (Lodging of caveat), the Territory is taken to be a person claiming an interest in the leasehold to which the declaration relates.

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- 1       (3) The registration under the *Land Titles Act 1925* of the copy of a  
2       declaration under section 259G creates a charge over the leasehold  
3       to which the declaration relates for—  
4           (a) the amount stated in the declaration; and  
5           (b) interest on the amount calculated on a daily basis at the interest  
6       rate applying from time to time under the *Taxation*  
7       *Administration Act 1999*, section 26 (Interest rate).

**259I Payment of deferred rectification work cost**

- 9       (1) If the full amount of the charge mentioned in section 259H (3) is  
10      paid to the Territory, the Executive or the planning and land  
11      authority (as appropriate) must—  
12           (a) revoke the declaration to which the charge relates; and  
13           (b) lodge a copy of the revocation with the registrar-general for  
14       registration under the *Land Titles Act 1925*; and  
15           (c) give a copy of the revocation to the lessee of the charged  
16       leasehold and anyone else who has an interest in the leasehold.  
17       (2) The charge is discharged on the registration under the *Land Titles*  
18       *Act 1925* of the copy of the revocation of the declaration.  
19       (3) The lessees of a charged leasehold are liable separately and together  
20       for the payment to the Territory of the full amount of the charge.  
21       (4) A registered charge under this section does not give a power of sale  
22       over the leasehold to which it relates.

**Subdivision 6.3.3 Prohibition notices and injunctions****260 Prohibition notices—making**

- 25       (1) This section applies if the planning and land authority believes, on  
26       reasonable grounds, that the giving of a notice under this section (a  
27       **prohibition notice**) is necessary to prevent or lessen a significant

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1                    threat or likelihood of irreversible damage to a thing because of the  
2                    conduct, or likely conduct, of a controlled activity.

- 3                    (2) Also, this section applies whether or not—  
4                        (a) an order has been made or is proposed to be made in relation to  
5                        a controlled activity; or  
6                        (b) a proceeding for an offence against this part has begun or is  
7                        about to begin.

- 8                    (3) The planning and land authority may give a prohibition notice to 1  
9                        or more of the following:  
10                      (a) the lessee or occupier of a place to which the controlled  
11                        activity relates;  
12                      (b) anyone by whom or on whose behalf the activity—  
13                        (a) was, is being, or is to be, conducted; or  
14                        (b) is likely to be conducted.

15                    Note        For how documents may be given, see Legislation Act, pt 19.5.

- 16                    (4) The prohibition notice must state—  
17                        (a) that it is a prohibition notice under this Act; and  
18                        (b) each person to whom it is directed; and  
19                        (c) that the notice takes effect when it is given to a person to  
20                        whom it is directed; and  
21                        (d) the grounds on which the notice is given; and  
22                        (e) the activity, and the place, in relation to which the notice  
23                        applies; and  
24                        (f) that the activity—  
25                        (i) must not be carried on by the person; or

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*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



## **12 260A Contravening prohibition notices**

- 13 (1) A person commits an offence if—

14 (a) the land and planning authority gives a prohibition notice to the  
15 person; and

16 (b) the notice is directed to the person; and

17 (c) the notice states that a controlled activity must not be carried  
18 on by the person in relation to a place; and

19 (d) the person carries on the activity in relation to the place.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

22           *Note*     A Territory authority is not liable to be prosecuted for an offence  
23                          against this section (see Legislation Act, s 121).

- 24 (2) A person commits an offence if—

25 (a) the land and planning authority gives a prohibition notice to the  
26 person; and

27 (b) the notice is directed to the person; and

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## **260B Prohibition notices—ending**

- 10 (1) A prohibition notice remains in force until it ends in accordance  
11 with this section.

12 (2) A prohibition notice ends on the earlier of the following:

13 (a) 60 days after the day it is given to a person to whom the notice  
14 is directed;

15 (b) the notice ends in accordance with the notice;

16 (c) the notice is revoked.

17 (3) A person to whom a prohibition notice is directed may, in writing,  
18 apply to the planning and land authority for the revocation of the  
19 notice.

20 (4) The application must state the grounds on which the revocation of  
21 the prohibition notice is sought.

22 (5) The planning and land authority may revoke the prohibition notice if  
23 satisfied, on reasonable grounds, that the notice is no longer  
24 necessary or appropriate.

**Section 8****260C Injunctions to restrain contravention of orders or prohibition notices**

- (1) This section applies if a person (the *relevant person*) has engaged, is engaging, or proposes to engage, in conduct that was, is, or would be, a contravention of an order or a prohibition notice.
- (2) The planning and land authority or anyone else may apply to the Supreme Court for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction—
  - (a) restraining the relevant person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so, requiring the relevant person to do anything.
- (4) The Supreme Court may grant an injunction restraining a relevant person from engaging in conduct of a particular kind—
  - (a) if satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.
- (5) This section applies whether or not a proceeding for an offence against this part has begun or is about to begin.

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**1      Subdivision 6.3.4     Other matters**

**2      261    Declaration of pest animal or pest plant**

- 3                (1) The Environment Minister may, in writing, declare—  
4                        (a) an animal to be a pest animal; or  
5                        (b) a plant to be a pest plant.  
6                (2) The Environment Minister must not make a declaration unless the  
7                        Minister has consulted with—  
8                        (a) the flora and fauna committee under the *Nature Conservation*  
9                        *Act 1980*; and  
10                  (b) for a proposed declaration under subsection (1) (a)—the animal  
11                        welfare advisory committee under the *Animal Welfare*  
12                        *Act 1992*.  
13                (3) After making a declaration, the Environment Minister—  
14                        (a) must arrange for the preparation of a plan for the control of the  
15                        propagation of the pest animal or plant; and  
16                        (b) if the declaration was made under subsection (1) (a)—may  
17                        arrange for the preparation of a code of practice under the  
18                        *Animal Welfare Act 1992* for the pest animal.  
19                (4) A declaration is a disallowable instrument.

20                *Note*      A disallowable instrument must be notified, and presented to the  
21                        Legislative Assembly, under the Legislation Act.

- 22                (5) In subsection (1):

23                **animal** means any live vertebrate, but does not include a human  
24                        being.

1           **9      Conversion of Commonwealth leases**  
2           **Section 291 (3)**

3           *substitute*

4           (3) In this section:

5           *prescribed law* means any of the following laws:

6           (a) the *Leases Ordinance 1918*;

7           (b) the *Leases (Special Purposes) Ordinance 1925*;

8           (c) the *City Area Leases Ordinance 1936*;

9           (d) the provisions of a law mentioned in paragraph (a), (b) or (c) as  
10          in effect under the *National Land Ordinance 1989*.

11          (4) This section (as in force on the commencement of this subsection)  
12          applies to a revision, revocation, amendment or variation of a  
13          declaration mentioned in subsection (1)—

14          (a) that happens after the commencement of this subsection; or

15          (b) that happened on or after 21 December 2000 and before the  
16          commencement of this subsection.

17          (5) Subsection (4) and this subsection expire 3 months after the day of  
18          commencement of this subsection.

**1 Part 3**

**Public Roads Act 1902**

**2 10 Act amended—pt 3**

**3 This part amends the *Public Roads Act 1902*.**

**4 11 Notices of intention to close unnecessary road**  
**5 New section 19 (1A)**

**6 insert**

- 7 (1A) However, subsection (1) does not apply if the Minister is of the**  
**8 opinion that it is necessary to partly close the road to give effect to a**  
**9 minor development mentioned in the *Land (Planning and***  
**10 *Environment) Regulations 1992*, schedule 4, item 22.**

**11 12 Section 19**

*12 renumber subsections when Act next republished under Legislation*  
*13 Act 2001*

**14 13 New section 20**

**15 substitute**

**16 20 Closing of roads**

- 17 (1) If, after considering all objections (if any) made in accordance with**  
**18 the notice given under section 19 about the closing of a road, the**  
**19 Minister is satisfied that the road should be completely or partly**  
**20 closed, the Minister may, after the month mentioned in the notice,**  
**21 declare, in writing, that the road is completely or partly closed.**
- 22 (2) The Minister may, in writing, also declare a road is partly closed if**  
**23 the Minister is of the opinion that it is necessary to give effect to a**  
**24 minor development mentioned in the *Land (Planning and***  
**25 *Environment) Regulations 1992*, schedule 4, item 22.**

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- 1       (3) On the making of a declaration completely or partly closing a road,  
2           the land included in the closed road, or closed part of the road, is  
3           freed from any rights of the public or anyone to the land as a  
4           highway.
- 5       (4) A declaration under this section is a notifiable instrument.

6           *Note*      A notifiable instrument must be notified under the Legislation Act.

7

1  
2

**Part 4**

**Roads and Public Places Act  
1937**

3  
4

**14 Act amended—pt 4**

This part amends the *Roads and Public Places Act 1937*.

5  
6

**15 Objects in public places  
Section 15A, new note**

7

*insert*

8  
9  
10

*Note* If a person is authorised to place an object in, over or across a public place under a licence under the *Land (Planning and Environment) Act 1991*, a permit under this Act is not also required, see s 15T.

11

**16 New section 15T**

12

*insert*

13  
14  
15  
16

**15T Occupation etc of public land under Land Act licence**

A person is not required to hold a permit under this Act to place an object in, over or across, or otherwise interfere with, a public place if—

17  
18  
19  
20

- (a) the person holds a licence under the *Land (Planning and Environment) Act 1991* to occupy or use the public place; and
- (b) the public place is being occupied or used in accordance with the licence.

21

**1      Part 5                          Other amendments****2      17     Consequential and other amendments—sch 1**

3              Schedule 1 amends the Acts and regulations mentioned in it.

4

## **Schedule 1**

### **Part 1.1**

Consequential and other amendments  
Heritage Objects Act 1991

## Amendment [1.1]

## Schedule 1

## **Consequential and other amendments**

3 (see s 17)

## **Part 1.1**

# **Heritage Objects Act 1991**

[1.1] Section 37 (4)

6 *omit*

7 section 256 (5) (b)

8 *substitute*

#### **9 section 257 (2) (Content of orders)**

## [1.2] Section 40 (7)

11 *omit*

12 section 256 (5)

13 *substitute*

## 14 section 257 (Content of orders)

## Part 1.2

## **Land (Planning and Environment) Act 1991**

### [1.3] Section 71 (7)

18 *substitute*

- 19       (7) Section 257 (Content of orders) does not apply to an order made for  
20           this section.

**[1.4] Section 222, definition of *development*, paragraphs (f) and (g)**

*substitute*

- (f) if the land is unleased Territory land—a use of the land that is not authorised by a current licence or permit granted for the land under an Act;
- (g) the erection, fixing or displaying of a sign or advertising material on the land, or on a structure or building on the land, otherwise than in accordance with a right to do so expressly given by a current licence granted under this Act, a current lease or a current permit under the *Roads and Public Places Act 1937*;

**[1.5] Section 222, definition of *order***

*substitute*

*order* means—

- (a) an order under division 6.3; or
- (b) a decision under another Act that is declared by an Act to be an order for this part.

**[1.6] Section 222, new definition of *prohibition notice***

*insert*

*prohibition notice*—see section 260 (1).

1                   **[1.7] New subdivision 6.2.6**

2                   *insert*

3                   **Subdivision 6.2.6       Powers of Supreme Court**

4                   **253A Injunctions to require compliance with approvals**

- 5                   (1) This section applies if a person (the *relevant person*) has failed, is  
6                   failing, or proposes to fail, to do something in accordance with the  
7                   terms of an approval.
- 8                   (2) The planning and land authority or anyone else may apply to the  
9                   Supreme Court for an injunction requiring the relevant person to do  
10                  the thing.
- 11                  (3) On application under subsection (2), the Supreme Court may grant  
12                  an injunction requiring the relevant person to do the thing.
- 13                  (4) The Supreme Court may grant an injunction requiring the relevant  
14                  person to do a thing—  
15                   (a) if satisfied that the person has failed to do the thing, whether or  
16                   not it appears to the court that the person intends to fail again,  
17                   or to continue to fail, to do the thing; or  
18                   (b) if it appears to the court that, if an injunction is not granted, it  
19                   is likely the person will fail to do the thing, whether or not the  
20                   person has previously failed to do the thing and whether or not  
21                   there is an imminent danger of substantial damage to someone  
22                   else if the person fails to do the thing.
- 23                  (5) This section applies whether or not a proceeding for an offence  
24                  against this part has begun or is about to begin.

1      **[1.8] Sections 264 and 265**

2               *substitute*

3      **264 Identity cards**

- 4      (1) The planning and land authority must issue an inspector with an  
5               identity card that states the person is an inspector for this Act, or for  
6               stated provisions of this Act, and shows—  
7               (a) a recent photograph of the person; and  
8               (b) the name of the person or the particulars that are prescribed  
9               under the *Magistrates Court Act 1930* as the identifying  
10               particulars for the person (or both); and  
11               (c) the date of issue of the card; and  
12               (d) a date of expiry for the card; and  
13               (e) anything else prescribed under the regulations.  
14      (2) A person commits an offence if—  
15               (a) the person ceases to be an inspector; and  
16               (b) the person does not return the person's identity card to the  
17               chief executive as soon as practicable (but within 7 days) after  
18               the day the person ceases to be an inspector.  
19               Maximum penalty (subsection (2)): 1 penalty unit.  
20      (3) An offence against this section is a strict liability offence.

21      **265 Power not to be exercised before identity card shown**

22      An inspector may exercise a power under this Act in relation to a  
23               person only if the inspector first shows the person his or her identity  
24               card.

1      **[1.9] Sections 268 and 270**

2                *omit*

3      **[1.10] Section 277**

4                *substitute*

5      **277 Review of decisions—orders and prohibition notices**

- 6      (1) Application may be made to the administrative appeals tribunal for  
7                review of a decision of the planning and land authority—  
8                (a) to make an order under section 254A (2) (Decision on  
9                application to planning and land authority for order) or  
10               section 255A (2) (Decision on proposed order on planning and  
11               land authority's own initiative); or  
12               (b) not to make an order under section 254A (2); or  
13               (c) to include in an order under section 254A (2) or 255A (2) a  
14               direction of a kind mentioned in section 257 (3); or  
15               (d) to refuse, under section 258A (4) (Ending of orders), to revoke  
16               an order; or  
17               (e) to give a prohibition notice under section 260 (3) (Prohibition  
18               notices—making); or  
19               (f) to refuse, under section 260B (5) (Prohibition notices—  
20               ending), to revoke a prohibition notice.  
21      (2) A notice given by the planning and land authority to a person in  
22               accordance with section 257A (a), (b), (c) or (g) (Notice of making  
23               of orders) must be in accordance with the requirements of the code  
24               of practice under the *Administrative Appeals Tribunal Act 1989*,  
25               section 25B (1).

1      **[1.11] Schedule 5 heading**

2            *omit*  
3            (see s 4, s 255)  
4            *substitute*  
5            (see s 4, s 258)

6      **[1.12] Dictionary, definition of *authorised person***

7            *substitute*  
8            ***authorised person*—**  
9            (a) for subdivision 4.4.3 (Procedures and powers)—see  
10          section 143.  
11          (b) for subdivision 6.3.2 (Rectification work)—see  
12          section 259B (1).

13     **[1.13] Dictionary, definition of *pest animal***

14          *substitute*  
15          ***pest animal*** means an animal declared to be a pest animal under  
16          section 261.

17     **[1.14] Dictionary, definition of *pest plant***

18          *substitute*  
19          ***pest plant*** means an plant declared to be a pest plant under  
20          section 261.

21     **[1.15] Dictionary, new definitions of *prohibition notice* and  
*rectification work***

22          *insert*  
23          ***prohibition notice***, for part 6 (Approvals and orders)—see  
24          section 260 (1).  
25          ***rectification work***, for subdivision 6.3.2 (Rectification work)—see  
26          section 259.

1                   **Part 1.3**

2                   **Land (Planning and  
3                   Environment) Regulations  
1992**

4                   **[1.16] Regulation 39**

5                   *omit everything before subregulation (1) (a), substitute*

6                   **39 Prescribed period—Act, s 254A (4)**

7                   (1) The prescribed period is—

8                   **[1.17] Regulation 39**

9                   *omit*

10                  section 256 (1)

11                  *substitute*

12                  section 254 (1)

13                  **[1.18] New regulation 39A**

14                  *in division 4.3, insert*

15                  **39A Definition of *minor development*—determined criteria**

16                  (1) The Minister may, in writing, determine criteria for the dictionary,  
17                  definition of *minor development*, paragraph (h).

18                  (2) A determination is a notifiable instrument.

19                  *Note*           A notifiable instrument must be notified under the Legislation Act.

20                  **[1.19] Schedule 4, new item 22**

21                  *insert*

22                  A minor development to vary a lease only to incorporate into  
the lease an encroachment onto, over or under unleased  
Territory land from the lease.

## [1.20] Dictionary, definition of *minor development*

2 *omit*

3 , other than a lease variation,

## **Part 1.4                      Land Titles Act 1925**

[1.21] Section 72AB

## 6 *substitute*

## **72AB Registration etc of orders under Land Act**

- 8       (1) This section applies if the registrar-general receives a notice under  
9           the Land Act, section 257A (Notice of making of orders) or  
10          section 258A (Ending of orders) about an order under the Land Act  
11          that appears to affect a Crown lease.

12      (2) The registrar-general must endorse on the folium of the register  
13          constituted by the relevant certificate of title a memorial in  
14          accordance with this Act about the making or ending of the order.

## **Part 1.5 Nature Conservation Act 1980**

## [1.22] Section 61 (1), notes

17                   *substitute*

- 18            *Note 1* A person to whom an order under the *Land (Planning and Environment)*  
19            Act 1991, div 6.3 is directed is not required to hold a licence under this  
20            Act for any action required to comply with the order in relation to the  
21            animal or plant (see that Act, s 258C).

22            *Note 2* If a form is approved under s 80B (Approved forms) for an application,  
23            the form must be used.

24            *Note 3* A fee may be determined under s 83A (Determination of fees) for this  
25            section.

Amendment [2.1]

---

1      **Schedule 2**      **Technical amendments of**  
2      **Land (Planning and**  
3      **Environment) Act 1991**  
4      (see s 3)

5      **[2.1] New section 4**

6      *insert*

7      **4 Offences against Act—application of Criminal Code etc**

8      Other legislation applies in relation to offences against this Act.

9      *Note 1 Criminal Code*

10     The Criminal Code, ch 2 applies to the following offences against this  
11     Act (see Code, pt 2.1):

- 12     • s 258 (Contravening orders)
- 13     • s 259C (1) (Obstructing etc authorised people)
- 14     • s 260A (Contravening prohibition notices)
- 15     • s 264 (2) (Identity cards).

16     The chapter sets out the general principles of criminal responsibility  
17     (including burdens of proof and general defences), and defines terms  
18     used for offences to which the Code applies (eg **conduct**, **intention**,  
19     **recklessness** and **strict liability**).

20     *Note 2 Penalty units*

21     The Legislation Act, s 133 deals with the meaning of offence penalties  
22     that are expressed in penalty units.

23     **Explanatory note**

24     This amendment inserts a new standard provision consequent on the Criminal Code. The  
25     Code, chapter 2 applies to all offences created after its commencement.

## [2.2] Section 186E (2), new definitions

2 *insert*

*earlier index no*—see section 186B, definition of *earlier index number*.

*later index no*—see section 186B, definition of *later index number*.

## **Explanatory note**

<sup>7</sup> This amendment makes it clear that the abbreviated references to index numbers in  
<sup>8</sup> section 186E (1) are to the terms as defined in section 186B.

## [2.3] Section 222, new definition of *inspector*

10 *insert*

**11**           *inspector* means a person appointed as an inspector under  
**12**           section 263 (1).

## **Explanatory note**

14 This amendment inserts a definition of the term in accordance with current drafting  
15 practice.

## [2.4] Division 6.4 heading

17                   *substitute*

## Division 6.4

## **Inspection and seizure powers**

## **Explanatory note**

20 This amendment makes the division's heading more descriptive of its contents.

Amendment [2.5]

---

1      **[2.5] Section 263**

2            *substitute*

3      **263 Appointment of inspectors**

4      (1) The planning and land authority may appoint a person as an  
5            inspector for this part.

6            *Note 1* For the making of appointments (including acting appointments), see  
7            Legislation Act, div 19.3.

8            *Note 2* In particular, a person may be appointed for a particular provision of a  
9            law (see Legislation Act, s 7 (3)) and an appointment may be made by  
10           naming a person or nominating the occupant of a position (see s 207).

11      (2) An inspector has the functions that the planning and land authority  
12           directs.

13      **Explanatory note**

14      This amendment brings the appointment provisions for inspectors into line with current  
15           drafting practice.

16      **[2.6] Section 276 heading**

17            *substitute*

18      **276 Review of decisions—objectors and third parties to  
19           approvals**

20      **Explanatory note**

21      This amendment makes the section's heading more descriptive of its contents.

22      **[2.7] Section 279 heading**

23            *substitute*

24      **279 Application for review by objectors—notification to  
25           applicants**

26      **Explanatory note**

27      This amendment makes the section's heading more descriptive of its contents.

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Amendment [2.8]

1      **[2.8] Schedule 5, item 12**

2      *substitute*

12      parking a heavy vehicle on residential      20 penalty  
land in contravention of a code of      units  
practice under the *Road Transport*  
*(Safety and Traffic Management)*  
*Regulations 2000*, division 3.1.3 about  
the parking of heavy vehicles

3      **Explanatory note**

4      This amendment corrects an error in the citation of the regulations.

5      **[2.9] Dictionary, new definition of *inspector***

6      *insert*

7      *inspector*, for part 6 (Approvals and orders), means a person  
8      appointed as an inspector under section 263 (1).

9      **Explanatory note**

10     This amendment is consequential on another amendment.

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## Endnotes

### Republications of amended laws

1      For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### Penalty units

2      The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.